

GJMR020017662025



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In the Court of Principal Senior Civil Judge, Morbi.

Commercial Civil Suit No : 30 of 2025

Exhibit- 27

Plaintiff

LUMEN CERAMIC PVT. LTD.

Authorized Person / Representative,
Shri. Sanghani Rudresh Shivlalbhai,
Age About: 33 Years

Office At:-

8-A National Highway,
Lakhdhirpur Road,
B/H Royal Cement Ind., Morbi-363642, Gujarat.

Versus

Defendant

- Shri Pallavi Kumari,**
Proprietor of,
Prince Marble and Sanitary
GSTIN-10FCFPK6731J1ZP
Address at:
Lakhisarai Bypass, DPEP Makuna,
New Bus Stand, Naya Bazar,
Lakhisarai-811311

Subject :- Suit for recovery of Rs.3,89,802/-.

Ld. Advocate for the Plaintiff : Mr. Y. S. Dave

For the defendant proceeded Ex-parte.

-: JUDGMENT :-

[1] The plaintiff has instituted the present Commercial Suit seeking recovery of an amount of Rs.3,89,802/- along with interest on the outstanding amount, which is allegedly due and payable by the defendant to the plaintiff.

[2] The brief facts of the case of the plaintiff are as under : -

[2.1] The Plaintiff is a duly incorporated company engaged in the business of manufacturing, trading and export of ceramic glazed wall tiles and allied products. The present suit is instituted through its Authorized Representative, Shri Sanghani Rudresh Shivilalbhair, who is duly authorized to sign, verify and prosecute the present proceedings on behalf of the Plaintiff.

[2.2] The Defendant is a sole proprietorship concern carrying on business in the name and style of Prince Marble and Sanitary through its proprietor, Shri Pallavi Kumari. The Defendant, acting through its proprietor, had entered into commercial transactions with the Plaintiff in the ordinary course of business and is liable for all dues, liabilities and obligations arising therefrom.

[2.3] During June 2023, an oral contract of sale was concluded between the Plaintiff and the Defendant whereby the Defendant placed orders for supply of ceramic goods on credit basis and the Plaintiff agreed to supply the same. It was an essential term of the contract that the Defendant would pay the sale consideration for the goods supplied within the agreed credit period upon delivery and acceptance thereof.

[2.4] In pursuance of the said contract, the Plaintiff duly supplied and delivered the ordered goods to the Defendant and raised Invoice No. GST/529 dated 08.06.2023 for a sum of Rs.4,02,653/-. The said goods were transported under a valid E-Way Bill and were duly received, accepted and utilized by the Defendant without raising any dispute, objection or complaint with regard to the quantity, quality, rate, specification or delivery thereof. The Plaintiff duly performed and fulfilled its obligations under the contract.

[2.5] The Plaintiff maintains a running, open and non-mutual account in the ordinary course of its business. As per the books of account and ledger regularly maintained by the Plaintiff, a sum of Rs.3,89,802/- remains due, outstanding and payable by the Defendant towards the goods supplied. The Defendant acknowledged and admitted the said liability by making part-payments of Rs.3,00,000/- on 30.08.2023 and Rs.1,00,000/- on 19.09.2023 after receipt of the goods. Despite repeated demands and requests, the Defendant failed

and neglected to clear the outstanding dues. The Defendant has continued to retain the benefit of the goods supplied by the Plaintiff while wrongfully withholding payment thereof, thereby committing breach of its contractual obligations and rendering itself liable to pay the outstanding amount together with interest thereon.

[2.6] The cause of action further arose when the Defendant, after inspecting and approving the goods, finalized their price and placed orders as per business requirements but failed to clear the outstanding dues despite repeated demands. Consequently, the Plaintiff, through counsel, issued a legal notice dated 25.06.2024, which was duly served upon the Defendant. In reply dated 20.07.2024, the Defendant, through counsel, denied the Plaintiff's claim and alleged that the business relationship had ended due to the Plaintiff's failure to supply matching tile designs, resulting in unsold stock lying in the Defendant's godown, and contended that the alleged outstanding amount of Rs. 3,89,802/- was not recoverable until reconciliation of accounts and adjustment of such stock. The Defendant, while expressing willingness to settle accounts subject to adjustment of the alleged dead stock, called upon the Plaintiff to withdraw the legal notice. However, neither the Defendant nor his counsel appeared before this Hon'ble Court to substantiate the said allegations or pursue the defence raised in the reply notice. The cause of action also arose upon issuance of the legal notices demanding payment. Since the transactions between the

parties, supply of goods, and issuance of notices occurred within the territorial jurisdiction of this Hon'ble Court, this Hon'ble Court has jurisdiction to entertain, try, and decide the present suit. Being aggrieved by the Defendant's failure to discharge his liability and make payment of the outstanding dues, the Plaintiff has instituted the present suit seeking the following reliefs:

(1) A decree for recovery to the effect that plaintiff is entitled to recover a sum of Rs.3,89,802/- along with prevailing interest from the filing of the suit till the date of realisation of amount along with cost of this suit, be passed in favour of plaintiff and against the Defendant and

(2) Such other reliefs as deemed fit and proper in the facts and circumstances of the case may also be passed in favour of the plaintiffs and against the Defendant in the interest of justice.

[3] After institution of the suit, summons were issued to the Defendant through RPAD and were duly served, as evidenced by the postal receipts and tracking reports produced by the Plaintiff at Exhibit-8, thereby establishing due service of summons upon the Defendant. The Plaintiff also placed on record a supplementary document, namely the original C.A. certified account statement at Exhibit-9. Despite due service, the Defendant failed to enter appearance or file any written statement

or defence. Consequently, the Plaintiff filed an application at Exhibit-10 seeking permission to proceed ex-parte, which was allowed by this Hon'ble Court, and vide order dated 06.10.2026, the suit was directed to proceed ex-parte against the Defendant.

[4] On the basis of the pleading of the plaintiff and documents on record, issues were framed for adjudication of this suit vide Exh. - 11 as under:

- (1) Whether the plaintiff prove that the dispute involved in the present suit is a commercial dispute of a specified value, liable to be tried by this Court ?
- (2) Whether the plaintiff proves that the suit has been filed by a person, who holds the requisite authority of the plaintiff firm who therefore, is entitled under law to file the present suit ?
- (3) Whether the plaintiff proves that this Court has the territorial jurisdiction to adjudicate the present suit ?
- (4) Whether the plaintiff proves that the defendant had purchased goods from the plaintiff and Rs.3,89,802/- is outstanding against defendant towards the goods supplied to defendant ?
- (5) Whether the plaintiff proves that as defendant has not paid the due amount, the defendant is liable to pay interest, to the plaintiff ? If yes, at what rate ?

(6) What order and decree ?

[5] My findings on the above mentioned issues are as under :-

- (1) In affirmative.
- (2) In affirmative.
- (3) In affirmative.
- (4) In affirmative.
- (5) Partly, in affirmative.
- (6) As per final order.

[6] The plaintiff has produced the following oral as well as documentary evidence.

Oral Evidence		
Sr. No.	Exh.	Description of Document
1	12	Affidavit of examination-in-chief of Sangani Rudresh, S/o Sangani Shivalalbhai Authorized person/ Representative
Documentary Evidence		
Sr. No.	Exh.	Description of Document
1	14	Copy of Board of Resolution dtd. 13/05/2024
2	15	Computerized details gathered from GSTIN Portal of in relation to proprietor
3	16	Copy of Invoice No. GST/529
4	17	Computerized copy of auto generated E-way bill No. 6615 7423 3533 from E- Way Bill system
5	18	Certified copy of accounting ledger of plaintiff
6	19	Office Copy of Legal Notice dated 25/06/2024 to defendant

7	20	Original Postal receipt Legal Notice dated 25/06/2024 to defendant
8	21	Computerized Postal tracking report of Legal Notice dated 25/06/2024 to defendant
9	22	Reply of defendant dtd. 20.07.2024
10	23	Original Non-starter report dtd. 01/01/2025
11	24	Computerized GST Certificate of plaintiff company
12	25	Copy of Aadhar Card Authorized person/representative of the plaintiff company

[8] The Plaintiff-side has submitted closing pursis at Exh. 26. After filling of suit the notice was duly served upon the defendant; however, he failed to remain present. Thereafter, the learned Advocate for the plaintiff filed an Ex-parte application at Exh.10. Consequently, the Court allowed the said application. As the matter is proceeded Ex-parte against the defendant and as no one appeared before the court from the defendant's side to produce his evidence.

:- REASONS :-

[8] In this matter, Defendant has not appeared before this Court and as such there is no any written statement, there is no contest from the defendant side. Therefore, it would be appropriate to refer some of provisions relating to non filing of Written Statement / Evasive denial by the Defendant.

"Order 8 Rule 3A. Denial by the defendant in suits before the

Commercial Division of the High Court or the Commercial Court -

- (1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.
- (2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.
- (3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.
- (4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.
- (5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit."

Order 8 Rule 5 "Specific denial"

- (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so

admitted to be proved otherwise than by such admission.
"Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability."

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decrees shall bear the date on which the judgment was pronounced.

Therefore, when the defendant has not filed the written statement, the Court has ample powers to pass the decree on the basis of the evidence produced by the plaintiff. The Court is also empowered to call for the plaintiff to produce his evidences and prove his case.

[8.1] It is pertinent to note that the plaintiff, through his learned Advocate, had issued a legal notice dated 25.06.2024 to the defendant by Registered Post A.D., calling upon the defendant to

pay the outstanding dues payable to the plaintiff. However, the defendant has failed to pay the legally recoverable amount. A copy of the said notice, along with the R.P.A.D. receipt and the online tracking report confirming dispatch thereof, has been produced on record at Exhibit-21. Thus, despite having due knowledge of the notice calling upon him to discharge the outstanding liability, the defendant has neither appeared before this Hon'ble Court nor made payment of the dues

Now, looking to the issues framed by this court, they can be described as below:

Issue No. 1 : -

So far this issue is concerned, looking to the Examination-in-chief of representative of plaintiff firm vide Ex. 12 and documents submitted on behalf of plaintiff vide Exh. 14 and Exh. 25, which it transpires that the defendant has purchased the material amounting to Rs.3,89,802/-. So, plaintiff proved that, the plaintiff firm has sold goods to the defendant. Looking to the chief examination and documents submitted on behalf of plaintiff, it is clearly a commercial transaction and the plaintiff has also supported this fact in his evidence affidavit at Exh. 12 and evidence of plaintiff remained unchallenged. So, I decide this Issue No. 1 in the affirmative.

Issues No. 2 : -

On this issue, the plaintiff has stated in his plaint that being a designated partner of the plaintiff firm, he has filed the

present suit. Moreover, he has also reiterated the said fact in his affidavit of examination in chief on oath at Exh. 12 that he is the partner of the plaintiff firm, from which it transpires that he is representative of the partnership firm and authority letter to the present plaintiff has been issued by the firm. This fact is not challenged by the defendant and there is no reason for the plaintiff to state false fact on affidavit. Hence, it is proved that the plaintiff is entitled to file the present suit. Hence, I have no reason to disbelieve this fact. Under the circumstances, this Issue No 2 is decided in the affirmative.

Issues No. 3 : -

This issue pertains to the jurisdiction. Now, looking to the plaint, it seems that the plaintiff is doing his business in the city of Morbi and the plaintiff has supplied the material to the defendant from Morbi and so within the jurisdiction of this court the plaintiff has supplied the goods to the defendant and also considering non starter report of D.L.S.A., Morbi, produced vide Exh. 23. This court has jurisdiction to entertain the present suit. So, I decide this Issue No. 3 in the affirmative.

Issues No. 4 : -

The plaintiff has filed affidavit of examination in chief at Exh. 12 as per provision of O. 18, R. 4 of C. P. C. In his affidavit, the partner of the plaintiff firm has stated all the facts of plaint. He has also produced invoice vide Exh. 16. Accordingly, he has stated that the defendant has purchased goods and the

plaintiff supplied goods to the defendant. He has also stated that the out of the said amount, Rs.3,89,802/- remains due to the plaintiff. So, it is clearly proved that the defendant has purchased the material from the plaintiff and Rs.3,89,802/- remains due to the plaintiff. So, this Issue No. 4 is decided in the affirmative.

Issues No. 5 : -

As the plaintiff has successfully proved the Issue No. 4, the plaintiff is entitled for interest as the defendant has not paid the due amount. The plaintiff has claimed interest from the date of filing of the suit on the outstanding amount of the plaintiff. Now, looking to the transactions entered into between the parties, it is a business transaction and as the defendant illegally not paid the due amount of the plaintiff, the plaintiff is entitled to the interest.

It is a settled position of law that the award of interest lies within the discretionary power of the Court, as governed by Section 34 of the Code of Civil Procedure. The Court may award different rates of interest for the pre-suit period, pendente lite period, and post-decree period. At this juncture, it is useful to refer to the decision of the Constitution Bench of the Hon'ble Supreme Court in *Central Bank of India v. Ravindra*, (2002) 1 SCC 367, wherein it was held that the Court may grant differential interest rates for distinct periods—pre-suit, during pendency of the suit, and post-decree. It is also a matter of judicial notice and common prudence that the market rate of interest has shown a declining trend over recent years. In view of

the foregoing, it would be just and proper to award interest at the rate of 7% per annum from the date of filing of the suit till the date of realization and, accordingly, the Issue No. 5, is decide partly in the affirmative.

Issues No. 6 :-

As the plaintiff has successfully proved all the Issues the plaintiff is partly entitled to the relief as he has prayed for and in view of Issue no. 6, I pass the following final order in the interest of justice.

:- ORDER :-

- (1) The suit of the plaintiff is hereby partly allowed.
- (2) The plaintiff is entitled to recover an amount of Rs.3,89,802/- from the Defendant, along with interest at the rate of 7% per annum from the date of filing of the suit till actual realization of the amount.
- (3) The Defendant shall pay the costs of the suit to the plaintiff and shall bear their own costs.
- (4) Decree be drawn accordingly.

Signed and pronounced in the open Court today on this 30th day of June, 2026 at Morbi.

Date : 30/06/2026

Place : Morbi

(Prashant parmanand Shah)

Principal Senior Civil Judge,

& Addl. Chief Judi. Magi.

Morbi.

[GJ00665]

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