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**IN THE COURT OF 2nd ADDITIONAL SENIOR CIVIL
JUDGE, HIMMATNAGAR, DIST. SABARKANTHA**

Special Summary Suit No.16/2019

Ex. : _____

Plaintiffs: Partner of Suraksha Enterprise

1. Patel Ashokkumar Babulal
Age: 42 years, Occupation: Business
Resi. Of: 14/Sumeru Complex, Civil Circle,
Tal. Himmatnagar, Dist. : Sabarkantha
2. Patel Kanaiyalal Sankalchand
Age: 42 years, Occupation: Business
Resi. Of: At Lodra, Tal. Mansa,
Dist. Mehsana

// VERSUS //

- Defendants:**
1. Umberto Ceramics International Pvt. Ltd.
Address: Sadoliya-Galteshwar Road,
Opp. N.H.-8, Tal. Prantij, Dist. Sabarkantha
 2. Vinay Kumbhat CFO
Umberto Ceramics International Pvt. Ltd.
Address: Sadoliya-Galteshwar Road,
Opp. N.H.-8, Tal. Prantij, Dist. Sabarkantha
 3. Sarwar Alam Purchase Manager

Umberto Ceramics International Pvt. Ltd.
Address: Sadoliya-Galteshwar Road,
Opp. N.H.-8, Tal. Prantij, Dist. Sabarkantha

4. Dharmendra Jain

Umberto Ceramics International Pvt. Ltd.
Address: Sadoliya-Galteshwar Road,
Opp. N.H.-8, Tal. Prantij, Dist. Sabarkantha

:: Suit for recovery of Rs.6,74,655/- ::

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Learned Advocate Mr. M.R. Pathan appeared for plaintiffs.

Learned Advocate Mr. V.P. Barot appeared for defendants.

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:: J U D G M E N T ::

1. The plaintiff firm has filed this Special Summary Suit under Order 37 Rule 1-2 of the Civil Procedure Code against the defendants to recover the outstanding amount of Rs.6,74,655/- (Rupees six lakhs seventy four thousand six hundred fifty five only).
2. The brief facts of the present suit is that the plaintiffs are the partners of plaintiff firm and is engaged in the business of sell of electric materials.

It is contended by plaintiff firm that plaintiff firm used to send goods i.e, electric materials to the defendants from time to time on confirmed order from the defendants and the defendants used to sign on the delivery challan and bills have also been issued to the defendants. Therefore, the defendants have purchased goods worth Rs.11,76,860/-

from the plaintiff firm and has made payment of Rs.5,02,205/- and hence, an amount of Rs.6,74,655/- is outstanding. But in spite of several requests and reminders, defendants made false excuses on various plea and thereafter, the defendants issued cheque nos.185727 and 185728 each of Rs.50,000/- dated 20.01.2018 and 01.02.2018 respectively. However, both the cheques got returned with the endorsement “funds insufficient” and hence, the defendants failed to make the payment. Thereafter, plaintiff firm had sent a legal notice to the defendants on 03.05.2019 and though the notice was served to the defendants, the defendants failed to make the payment and gave a frivolous reply of the notice. Thus, the plaintiff is entitled to recover Rs.6,74,655/- along with interest till the date of recovery alongwith costs of the suit. Moreover, the plaintiff company has also prayed for any other relief which Hon'ble Court deems fit.

3. The summons for appearance was issued to the defendants which was served and the defendants appeared through their learned advocate Mr. V.P. Barot and have filed leave to defence vide Exh.23 which was allowed with the condition to deposit the 50% of the suit amount in Court within 15 days from the date of the order.
4. The plaintiffs have filed an application under Order-37, Rule 3(4) vide Exh.22 praying for decree in their favour.
5. Therefore, following points are required to be decided by this Court.

:: POINTS OF DETERMINATION ::

1. Whether the plaintiffs are entitled to recover an amount of Rs.6,74,655/- from the defendants ?
 2. Whether the plaintiffs are entitled to get interest ? If yes, at what rate ?
 3. What order and decree ?
6. My answer of the above issues are as under :
1. In the affirmative.
 2. In the affirmative. At the rate of 6% p.a.
 3. As per final order.

:: R E A S O N S ::**Issue Nos.1 and 2 :**

7. For the sake of convenience and in order to avoid repetition of facts and since point nos. 1 and 2 are inter connected, they are discussed together. The plaintiffs have produced the below mentioned documentary evidences in order to prove their case :

Sr. No.	Name of Documents	Exh.
1	True copy of registration certificate	43
2	True copy of registration certificate under Sales Tax Act	44
3	True copy of GST registration	45
4	Computerised ledger account	46
5	Copy of invoice no.TI0311	47
6	Copy of delivery challan no.TI0311	48
7	Copy of invoice no.TI0312	49

8	Copy of delivery challan no.TI0312	50
9	Copy of invoice no.TI0320	51
10	Copy of delivery challan no.TI0320	52
11	Copy of invoice no.TI0323	53
12	Copy of delivery challan no.TI0323	54
13	Copy of invoice no.TI0343	55
14	Copy of delivery challan no.TI0343	56
15	Copy of invoice no.TI0359	57
16	Copy of delivery challan no.TI0359	58
17	Copy of invoice no.TI0390	59
18	Copy of delivery challan no.TI0390	60
19	Copy of invoice no.TI0435	61
20	Copy of delivery challan no.TI0435	62
21	Copy of invoice no.TI0510	63
22	Copy of delivery challan no.1151	64
23	Copy of invoice no.TI0651	65
24	Copy of delivery challan no.1347	66
25	Copy of invoice no.TI0678	67
26	Copy of delivery challan no.1383	68
27	Copy of invoice no.TI0732	69
28	Copy of delivery challan no.1457	70
29	Copy of invoice no.TI0747	71
30	Copy of invoice no.TI0060	72
31	Copy of delivery challan no.1568	73
32	Copy of delivery challan no.1571	74
33	Copy of journal voucher no.3	75
34	Copy of journal voucher no.4	76
35	Copy of journal voucher no.27	77

36	Copy of journal voucher no.35	78
37	Copy of cheque and cheque return memo	79
38	Copy of cheque and cheque return memo	80
39	Email for cheque return	81
40	Email for cheque return	82
41	Email for cheque return	83
42	Email for cheque return	84
43	Statutory notice	85
44	Postal receipts	86
45	Copy of letter sent to postal department	87
46	Reply from postal department	88
47	Reply from postal department	89
48	Reply from postal department	90
49	Reply from postal department	91
50	Copy of agreement	92

8. On perusal of the above referred documents, it is uncontested that the defendants had purchased goods from the plaintiff firm. It is further uncontested that defendants had failed to repay the outstanding amount on purchase of goods. Now, by referring the contentions of the plaintiff and the documents produced by the plaintiff company, the plaintiff firm has claimed the decree for Rs.6,74,655/- and in support of their claim, the documentary evidences produced by the plaintiffs are perused. On perusal of the documents it appears that at Ex.46, plaintiff company has submitted the statement of account wherein total outstanding amount is shown to Rs.6,74,655/-. Therefore in my view, plaintiff company is entitled to have decree of

the outstanding amount of Rs.6,74,655/- with interest as claimed in the present case. Further, the plaintiff firm had served legal notice to the defendants. Defendants appeared before the Court and filed the leave to defend application but have failed to produce any documentary evidence. Moreover, it is to be noted that the defendants were ordered to deposit the 50% suit amount in the Court within 15 days from the date of the order of leave to defence, however, the defendants have failed to do so. Hence, at the hearing of Summons for Judgment the plaintiff company is entitled to judgment forthwith under the provisions of Code of Civil Procedure under Order XXXVII Rule 2(3).

That, looking to the Provision of Order XXXVII Rule 2 (3) of C.P.C. and looking to the Judgment of **Vijaya Homes Loan Ltd. V/s. M/s. Crown Traders Ltd.** reported in **A.I.R. 1998 Delhi 182** under Order XXXVII Rule 2 (3) of C.P.C., the legal proposition is declared that, 'if the defendant fail to appear within 10 days of service of summons, it shall be deemed to be admitted the allegations made in the plaint'. The said ratio and judgment is applicable to the facts of the present case. In the present case, the defendants have not tried to contradict the pleadings of documents produced by the plaintiff firm. Hence, looking to the judgment cited above, the Court has to pass ex-parte decree. So far as interest rate is concern, there is no specific agreement between the parties regarding rate of interest, but looking to the prevailing

situation of market rate and bank rate, the interest at the rate of 6% p.a. is found legal and proper.

9. Hence, in view of above legal and factual aspect, the suit is required to be decreed and the final order is required to be passed with the following order:

:: FINAL ORDER ::

1. The suit of the plaintiffs is hereby allowed.
2. It is ordered that the defendants shall pay Rs.6,74,655/- (Rupees six lakhs seventy four thousand six hundred fifty five only) with simple interest at the rate of 6% p.a. from the date of institution of the suit i.e. 05.08.2019 till the date of decree.
3. The defendants are directed to bear the costs of the plaintiff's suit.
4. Decree be drawn accordingly.

Signed and Pronounced in Open Court on 01st day of April, 2026.

Place : Himmatnagar
Date : 01.04.2026

(Amit Bipinchandra Mamtora)
2nd Additional Senior Civil Judge
S.K. @ Himmatnagar.
Judge Code: GJ01059

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