

KABC020315412022



Form No.9 (Civil)

Title sheet for

- **Judgment in Suits  
(R.P.91)**

**IN THE COURT OF III ADDL. JUDGE AND MOTOR  
ACCIDENT CLAIMS TRIBUNAL, BENGALURU.  
(SCCH-18)**

**Dated : This 24<sup>th</sup> day of June 2023**

**Present: V. NAGAMANI, B.A.L., LL.B., LL.M.,  
III ADDL. JUDGE &  
MEMBER, MACT,  
BENGALURU.**

- **S.C. No.1027/2022**

**Plaintiff/s**

Sri. G.V. Gopalkrishna,  
Son of Late G.Venkatappa,  
Aged about 70 years,  
Residing at No.349,  
10<sup>th</sup>'B'Main, 3<sup>rd</sup>Block,  
Jayanagar, Bengaluru – 560011.

**(By Pleader Sri M. Ramanjaneya)**

V/s

**Defendant/s**

Sri. B.G. Anil,  
Father name not known,  
Major,  
House No.255, BTM 6<sup>th</sup>Stage,

BDA Layout, (Hulimavu),  
Opp. Silicon Builders,  
Bengaluru – 560076.

**Exparte**

Date of institution of the suit	:	29.10.2022		
Nature of the suit (suit on pronote, suit for declaration and possession, suit for injunction etc.)	:	Money recovery		
Date of commencement of recording of the evidence	:	14.06.2023		
Date on which the judgment is pronounced	:	<b>24.06.2023</b>		
		Years	Month/s	Days
		00	07	25

**(V.NAGAMANI)**  
**III ADDL JUDGE,**  
**COURT OF SMALL CAUSES,**  
**BENGALURU.**

**\*JUDGMENT\***

This judgment is emerged, consequent upon the suit filed by the plaintiff against the defendant, for recovery of **Rs.62,000/-** along with interest @ **18% p.a.** and other costs as the court may deems fit in the interest of justice.

**\* FACTS OF THE CASE IN NUTSHELL.\***

2. Facts leading to the case of the plaintiff that, the defendant being the owner of the property bearing No.255, BTM 6<sup>th</sup> stage, BDA Layout, (Hulimavu), Opp. to Silicon builders, Bengaluru, approached the plaintiff for painting contract for the purpose of painting the entire building belonging to the defendant. In this regard, quotation had given for the said purpose. Accordingly, completed the painting work in the year 2019.

3. It is also forthcoming in the plaint averments that, as per the request of the defendant, the plaintiff had taken quotation for value of paint on on 31.10.2019. Thereafter, he purchased the paint from Akshaya paints and Chemicals by getting proforma invoice for Rs.40,000/- dated 31.10.2019. On the very same day, plaintiff issued letter requesting the defendant to make payment without delay, and the final bill be given at the time of final payment.

4. It is further stated that, painting work including purchase of the paint has been valued for **Rs.90,000/-**. The defendant had agreed and accepted the said quotation. During the course of painting work, defendant had paid a sum of Rs.40,000/- in the month of October 2019. Subsequently, paid Rs.10,000/- for supervision and arrange of workers assuring that, he will clear the full amount shortly. But, inspite of repeated requests and demands, the defendant had postponed the payment of due amount.

5. Ultimately, the plaintiff got issued legal notice to the defendant on **17.08.2022** through registered post. For the said notice, the defendant had issued untenable reply on **01.09.2022**. As per the purchase proforma and notice dated **03.02.2019**, the defendant is liable to pay interest @ 18% along with due amount of **Rs.62,000/-** including interest and charges of legal notice. Due to the failure on the part of the defendant in making payment. The plaintiff having no other alternative, knocked the

door of this court for redressal.

6. After the registration of the case, as usual suit summons issued to the defendant. In spite of service of the said summons, the defendant remained absent before the court, and placed *exparte* as per the order of this court dated **10.04.2023**. In the said order clearly mentioned that, inspite of due service of summons, through paper publication, the defendant had remained absent, consequently he was placed *exparte*. Thereafter, matter was set down for evidence.

7. In order to prove the case of the plaintiff, one **G.V.Gopalakrishna**, stepped into witness box, and filed affidavit in lieu of examination in chief and examined as **PW-1**. At the time of the evidence of PW1, in all 8 documents got marked as **Ex.P1 to Ex.P8**. Since the defendant placed *exparte*, matter was set down for argument.

8. Heard the argument of learned counsel for plaintiff. And perused the entire materials available on

record.

9. Points that would arise for final determination of this case are as follows:

**\*P O I N T S\***

- 1. Whether the plaintiff proves that, the defendant had requested the plaintiff for painting his building as per proforma invoice dated 31.10.2019?**
- 2. Whether the plaintiff proves that, the defendant has failed to repay the due amount of Rs.62,000/- inspite of repeated requests demands and issuance of the legal notice dated 17.08.2022?**
- 3. Whether the plaintiff is entitled for the reliefs as prayed for?**
- 4. What Order or Decree?**

10. On appreciation of the evidence placed on record, I am answering the above points as follows:

**Point No.1: In the Affirmative.**

**Point No.2: In the Affirmative.**

**Point No.3: In the Affirmative.**

**Point No.4: As per the final order,**

**For the following:**

**\* REASONS \***

**POINT NO.1 AND POINT NO.2:**

11. These **two points** are interconnected with each other. Hence, taken together for common discussion, in order to avoid repetition.

12. The plaintiff **Sri. G.V. Gopalkrishna** herein, to discharge the burden lies on him, relied on his affidavit evidence, wherein he reiterated the plaint averments in connection with contract between the plaintiff and defendant with respect to the painting of the property belonged to the defendant. Apart from this, canvassed the point with respect to the failure on the part of the defendant in making payment of due amount of Rs.62,000/- in spite of repeated request and demands, as well as issuance of legal notice. In connection with the case of the plaintiff, the defendant herein, remained as silent spectator without challenging the case of the plaintiff by filing written statement and not made an

effort to cross examine the witness, nor adduced rebuttal evidence to shaken the case of the plaintiff. When the defendant placed exparte, duty is more on the part of the court to assess the available evidence, in order to come tot the proper conclusion with respect to the above points in connects with the facts in issue.

13. The plaintiff herein, to demonstrate all his assertions as already discussed supra, relied on 8 documentary evidence for consideration. Among them, Ex.P1 is the estimation. Ex.P2 is the proforma invoice. The recitals of these documents clearly evident about the transaction between the plaintiff and defendant and Ex.P3 letter dated 31.10.2019 sent by the plaintiff to the defendant substantiates the recitals of the Ex.P1 and 2.

14. Apart from this, copy of the legal notice dated 17.08.2022 marked at Ex.P4, postal receipt and acknowledgment card marked at Ex.P5 and 6, Ex.P7 and Ex.P8 reply as well as postal cover depict about the issuance of notice to the defendant by the plaintiff and his failure to repay the due amount fully noted in the

legal notice. The said notice was given prior to the institution of the suit in order to give an opportunity to the defendant for making good of the due amount to be payable to the plaintiff. But, the said opportunity has not been utilised, except sending reply notice as per Ex.P7, wherein denied the allegation of the plaintiff by stating that, the defendant is not liable to pay any due amount to the plaintiff and only to gain wrongfully, plaintiff had issued notice to the defendant. But to prove all the defences and answers of the defendant reflected in the reply notice, has not made an effort to appear before the court to substantiate the same by placing rebuttal evidence. Mere sending reply without challenging the case of the plaintiff holds no water.

15. After having notice of the institution of the suit against the defendant through paper publication, the defendant would have appeared before the court to deny the case of the plaintiff, the conduct of the defendant in the case on hand, makes this court to draw adverse inference against the defendant and to believe the case of

the plaintiff. Hence, I am of the view that, the plaintiff through his affidavit evidence and documentary evidence has placed clinching and convincing evidence which remained uncontroverted. Accordingly, I am answering the **Point No.1 and Point No.2 are in the Affirmative.**

**POINT NO.3:**

16. This point is with respect to the entitlement of reliefs prayed for, by the plaintiff firm in the case on hand. The plaintiff through this suit seeking necessary direction to the defendant for repayment of due amount of Rs.62,000/-. Evidence given by the plaintiff in this regard, remained unshaken. In such a situation the defendant cannot escape from his liability to pay the due amount of Rs.41,000/- with interest Rs.21,000/- along with legal notice charges of Rs.1,000/- in toto **Rs.62,000/-.**

17. In so far as interest of **18% p.a.** prayed for by the plaintiff is concerned, the transaction between the parties to the lis, will not come under the purview of big

commercial transaction. In such a situation, by considering the entire facts and circumstances of the case, and also in the light of procedures contemplated under section **34 of the C.P.C**, it is apt to award interest **@9% p.a.** on the principle amount adjudicated from the date of suit, till its realisation, the same will meet the ends of justice.

18. In the light of the above discussions, held above, I am answering the above **point No.3 is in the Affirmative.**

**POINT NO.4:**

19. In the light of my due discussions on point No. 1 to 3, I proceed to pass the following:

**\*ORDER\***

Suit filed by the plaintiff is hereby decreed with cost.

Consequently, the defendant is liable to pay due amount of **Rs.62,000/-** along with interest at **9% per annum**, to the plaintiff within **Two months** from the date of this order.

Failing which, the plaintiff, is at liberty to recover the decretal amount from the defendant, through due process of law.

Draw decree accordingly.

(Dictated to the Stenographer directly through on-line, corrected by me and then pronounced in the open court this the **24<sup>th</sup> day of June, 2023**).

**(V.NAGAMANI)**  
**III ADDL JUDGE,**  
**COURT OF SMALL CAUSES,**  
**BANGALORE.**

**ANNEXURE**

**List of Witnesses examined for Plaintiff:**

PW1                      Sri. G.V. Gopalkrishna

**List of documents exhibited for plaintiff:**

Ex.P1                      Estimation  
Ex.P2                      Proforma invoice  
Ex.P3                      Letter dated 31.10.2019  
Ex.P4                      Legal notice dated 17.08.2022  
Ex.P5                      Postal receipt  
Ex.P6                      Postal acknowledgment  
Ex.P7                      Reply dt. 01.09.2022  
Ex.P8                      Postal cover

List of witnesses examined for defendant:

Nil

List of documents exhibited for defendant:

Nil

**(V.NAGAMANI)**  
**III ADDL JUDGE,**  
**COURT OF SMALL CAUSES,**  
**BANGALORE.**