

PRESENT: **Sri. B. VENKATAPPA**
B.A.LL.B.
XX Additional Small Causes Judge
& XVIII Additional Chief Metropolitan
Magistrate, Bengaluru.

S.C.No:1794/2018

- Versus -

(Ex-parte).

1. Date of Institution	:	15.12.2018.
2. Nature of Suit	:	Recovery of Money
3. Date of Commencement of Recording Evidence	:	28.02.2019

4. Date of Judgment : 02.03.2019

5. Total duration : YEAR/S MONTH DAYS
00 02 17

(B. VENKATAPPA)
XX A.S.C.J. & XVIII A.C.M.M.,
Bengaluru.

:: JUDGMENT ::

The plaintiff M/s Krishna Traders has filed this suit against the defendant for recovery of Rs.1,79,350/- with interest at the rate of 24% per annum from the date of receipt of legal notice till the date of realization and cost of the suit.

2. The brief case of the plaintiff bank is as under:

The plaintiff is the dealer and supplier of cement to its customers and the defendant is also a dealer of cement. The defendant is the regular customer of the plaintiff from past six years. The plaintiff was supplying the order placed by the defendant on credit basis. The defendant placed orders to the plaintiff for supply of cement bags on various dates by assuring to make payments for the said orders placed by it. The plaintiff has supplied the Bharathi Brand cement of 100 bags on 07.11.2017 vide bill No.WS02142GST, Basic Rs.26,171.88, SGST of Rs.3,664.06 and CGST of Rs.3,664.06 in total 33,500/-, 100 bags on 23.11.2017 vide bill No.WS02509GST, Basic Rs.25,390.62, SGST of Rs.3,554.69, CGST of Rs.3,554.69 in total Rs.32,500/-, 100 bags on 22.12.2017 vide bill No.WS03220GST, Basic Rs.25,390.62, SGST of Rs.3,554.69, CGST of Rs.3,554.69 in total

Rs.32,500/-, 150 bags on 10.01.2018 vide bill No.WS03647GST, Basic Rs.38,164.06, SGST of Rs.5,342.97, CGST of Rs.5,342.97 in total Rs.48,850/- and 100 bags on 18.01.2018 vide bill No.WS03816GST, Basic Rs.25,000/- SGST of Rs.3,500/-, CGST of Rs.3,500/- in total Rs.32,000/- in all Rs.1,79,350/-. The plaintiff has supplied the cement bags as ordered by the defendant and on believing the words and assurance of making payment. But the defendant has not paid the amount of Rs.1,79,350/-. The bill No.WS02142GST dated:07.11.2017 and WS02509GST dated:23.11.2017 was typed as WS0122GST and WS025GST due to oversight and typographical error.

3. The plaintiff further stated that, the defendant has taken delivery of the orders placed by it, but miserably failed to make payment of the said amount to the defendant. The plaintiff when demanded the defendant to pay the said amount, the defendant expressed the financial problems and promised to repay the said amount within few days. It appears that, in order to cheat and defraud the plaintiff and without any intention to pay the aforesaid amount to the

plaintiff, the defendant has been postponing on one pretext or the other and he has not paid the amount. The plaintiff got issued the legal notice dated:18.09.2018 to the defendant demanding him to pay the said amount of Rs.1,79,350/-. But even after receiving the said legal notice, the defendant has neither paid the amount nor replied to the said notice. The cause of action for the suit arose on 07.11.2017, 23.11.2017, 22.12.2017, 10.01.2018, when the plaintiff supplied cement bags to the defendant and on subsequent dates within the jurisdiction of this court. The defendant is also liable to pay interest at the rate of 24% per annum. Hence, this suit.

4. In spite of service of summons, the defendant remained absent. Hence, it has been placed Ex-parte.

5. In order to substantiate the case made out by the plaintiff its Proprietor by name Sri. Santosh Memon examined himself as P.W.1 and got marked nine documents at Ex.P.1 to Ex.P.9. Thereafter, the plaintiff closed its side evidence.

6. Heard the arguments of learned counsel for the plaintiff. Perused the materials placed on record.

7. The points that would arise for my consideration are:

1. Whether the plaintiff is entitled for the suit claim together with interest as claimed ?

2. What order or decree ?

8. My findings on the above points are as under :

POINT No.1 - In the **Affirmative.**

POINT No.2 - As per final order,
for the following :-

REASONS

POINT No.1 :-

9. The plaintiff has filed this suit against the defendant for recovery of money. In order to substantiate the case made by the plaintiff its Proprietor by name Sri. Santosh Memon examined himself as P.W.1. P.W.1 by filing his sworn affidavit deposed before this Court that, the defendant is the regular customer of the plaintiff from past six years. The plaintiff was supplying the order placed by the defendant on credit basis. The defendant placed orders to the plaintiff for supply of cement bags on various dates by assuring to make payments for the said orders placed by it. The plaintiff has supplied the Bharathi Brand cement of 100 bags on 07.11.2017 vide bill No.WS02142GST, Basic Rs.26,171.88,

SGST of Rs.3,664.06 and CGST of Rs.3,664.06 in total 33,500/-, 100 bags on 23.11.2017 vide bill No.WS02509GST, Basic Rs.25,390.62, SGST of Rs.3,554.69, CGST of Rs.3,554.69 in total Rs.32,500/-, 100 bags on 22.12.2017 vide bill No.WS03220GST, Basic Rs.25,390.62, SGST of Rs.3,554.69, CGST of Rs.3,554.69 in total Rs.32,500/-, 150 bags on 10.01.2018 vide bill No.WS03647GST, Basic Rs.38,164.06, SGST of Rs.5,342.97, CGST of Rs.5,342.97 in total Rs.48,850/- and 100 bags on 18.01.2018 vide bill No.WS03816GST, Basic Rs.25,000/- SGST of Rs.3,500/-, CGST of Rs.3,500/- in total Rs.32,000/- in all Rs.1,79,350/-. The plaintiff has supplied the cement bags as ordered by the defendant and on believing the words and assurance of making payment. But the defendant has not paid the amount of Rs.1,79,350/-. The bill No.WS02142GST dated:07.11.2017 and WS02509GST dated:23.11.2017 was typed as WS0122GST and WS025GST due to oversight and typographical error.

10. P.W.1 further deposed that, the defendant has taken delivery of the orders placed by it, but miserably failed

to make payment of the said amount to the defendant. The plaintiff when demanded the defendant to pay the said amount, the defendant expressed the financial problems and promised to repay the said amount within few days. It appears that, in order to cheat and defraud the plaintiff and without any intention to pay the aforesaid amount to the plaintiff, the defendant has been postponing on one pretext or the other and he has not paid the amount. The plaintiff got issued the legal notice dated:18.09.2018 to the defendant demanding him to pay the said amount of Rs.1,79,350/-. But even after receiving the said legal notice, the defendant has neither paid the amount nor replied to the said notice. Hence, P.W.1 prayed for decree the suit with cost.

11. In support of his evidence, P.W.1 got marked nine documents at Ex.P.1 to Ex.P.9. Out of which, Ex.P.1 to 5 are the five Tax Invoices. They shows that, the plaintiff has supplied Bharathi Brand cement of 100 bags on 07.11.2017 vide bill No.WS02142GST, Basic Rs.26,171.88, SGST of Rs.3,664.06 and CGST of Rs.3,664.06 in total 33,500/-, 100 bags on 23.11.2017 vide bill No.WS02509GST, Basic

Rs.25,390.62, SGST of Rs.3,554.69, CGST of Rs.3,554.69 in total Rs.32,500/-, 100 bags on 22.12.2017 vide bill No.WS03220GST, Basic Rs.25,390.62, SGST of Rs.3,554.69, CGST of Rs.3,554.69 in total Rs.32,500/-, 150 bags on 10.01.2018 vide bill No.WS03647GST, Basic Rs.38,164.06, SGST of Rs.5,342.97, CGST of Rs.5,342.97 in total Rs.48,850/- and 100 bags on 18.01.2018 vide bill No.WS03816GST, Basic Rs.25,000/- SGST of Rs.3,500/-, CGST of Rs.3,500/- in total Rs.32,000/- in all Rs.1,79,350/-.

Ex.P.6 is the GST Registration Certificate. It shows that, the plaintiff company has registered GST authority and it has paid GST to the Government. Ex.P.7 is the Legal Notice dated:18.09.2018. It shows that, the plaintiff has issued legal notice to the defendant calling upon the defendant to pay Rs.1,79,350/- with interest at the rate of 24% per annum within 15 days from the date of receipt of notice. Ex.P.7 is the Postal Receipt and Ex.P.9 is the Postal Acknowledgment. They show that, the legal notice at Ex.P.7 issued by the plaintiff was received by the defendant.

12. In this case, inspite of service of summons, the defendant failed to appear before this court to contest the suit. Whatever spoken by the P.W.1 has remained unchallenged. To controvert the allegations made in the plaint as well as in the affidavit filed by way of examination-in-chief, the defendant has not cross-examined P.W.1 and has not appear before this Court and not chosen to file the written statement. The documentary evidences coupled with the evidence of P.W.1 has not been controverted by the defendant in any manner as stated above. The documents produced by the plaintiff at Ex.P.1 to Ex.P.9 clearly reveals that, the plaintiff has supplied cement bags of Bharathi brand to the total value of Rs.1,79,350/-. Further it reveals in spite of service of legal notice they have not made the payment to the plaintiff Bank as per the agreed terms and conditions. If, these factual features are put together, it can be stated that, the plaintiff has satisfactorily proved it's case with legal evidence. Hence, the plaintiff is entitled to recover the outstanding due amount of **Rs.1,79,350/- (One Lakh Seventy Nine Thousand Three Hundred and Fifty only)** from the defendant towards supply of cement. The plaintiff

has claimed interest at the rate of 24% per annum as agreed by the defendant. The transaction between the plaintiff and defendant is the business transaction. Therefore, if, the interest at the rate of 12% per annum is levied, it would meet the ends of justice. Accordingly, I record my findings on the above point No.1 in the **Affirmative**.

POINT No.2:-

13. As the result of my foregoing reasons and discussions, the suit of the plaintiff succeeded and deserves to be decreed.

In the result, I proceed to pass the :

O R D E R

The suit filed by the plaintiff as against the defendant is hereby decreed with costs.

The defendant is liable to pay a sum of **Rs.1,79,350/- (One Lakh Seventy Nine Thousand Three Hundred and Fifty only)** with interest at the rate of 12% per annum from date of the suit till its realization.

The defendant shall pay the decretal amount to the plaintiff within 3 months from the date of this order.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this the 2nd day of March 2019).

(B. VENKATAPPA)
XX Additional Small Causes Judge
& XVIII Additional Chief
Metropolitan Magistrate,
Bengaluru.

A N N E X U R E

Witnesses examined on behalf of the Plaintiff :

P.W.1 : Sri. Santosh Menon.

Documents marked on behalf of the Plaintiff:

Ex.P.1 to - Five Tax Invoices.
5
Ex.P.6 - GST Registration Certificate.
Ex.P.7 - Copy of Legal Notice.
Ex.P.8 - Postal Receipt.
Ex.P.9 - Postal Acknowledgment.

Witnesses examined on behalf of the defendant :

- Nil -

Documents marked on behalf of the defendant :

- Nil -

(B. VENKATAPPA)
XX A.S.C.J. & XVIII A.C.M.M.,
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