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**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AT VIRAMGAM, Dist. AHMEDABAD(R).**

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SPECIAL CIVIL SUIT NO.: 03 OF 2020

Exhibit No.-41

Shri Ram Cotton – Partnership Firm

Through its partner –

Thakkar Shaileshkumar Thakarshibhai

Address : Plot No.262-263, GIDC,
Hasalpur, Viramgam, Dist.: Ahmedabad

... Plaintiff

Versus

Royss Traders

Through its owner – Khona Kritikaben Priyenbhai

C/o.: Ravindrabhai G. Khona

Address : 301, Desai Solitaire,

Oareka Road, Classic Hotel,

King Circle, Matunga, Mumbai

... Defendant

Advocates :-

Learned Advocate for the plaintiff **Mr. S. K.Vora**

Learned Advocate for the defendant **Mr. N. S. Vafi**

Suit for recovery of Rs.22,62,768/- together with interest and costs.

:: Judgment ::

1. The plaintiff herein has instituted the present suit for recovery of Rs.22,62,768/- along with the interest, till realization of payment, and costs of this suit from the defendant.

The concise statement of the present case is that plaintiff is a registered partnership firm registered under Indian Partnership Act. This partnership firm is doing business of cotton. The plaintiff further submits that, defendant was purchasing materials from the plaintiff firm. The defendant has purchased material after checking material. On 10.08.2019, defendant has purchased 98 bale of cotton worth Rs.19,66,985/- and its bill was sent to the defendant and its entry was made in the account of defendant. Further, on 18.08.2019, defendant had purchased another bale of cotton worth Rs.19,94,986/- which was credited in the account of defendant. Out of total amount, defendant had paid Rs.18,00,000/- to the plaintiff in part payment. The defendant has to pay Rs.21,61,968/- along with interest to the plaintiff. As per the agreement if the defendant is not paid due amount within 30 days then defendant has to pay 15% interest. Therefore, the defendant has to pay Rs.21,61,968/- along with 15%

interest i.e. Rs.1,00,800/- so, in total defendant has to pay Rs.22,62,768/- to the plaintiff. Therefore, the plaintiff has filed present suit for recovery of amount which is due from the defendant.

2. Process have been issued to the defendant, but the defendant was not appeared before this court therefore, the court had passed an order on 21.09.2021 for proceed this matter ex-parte. Thereafter, the defendant has filed an application below Exh.11 for proceed the present matter by party. Therefore, on 04.04.2022, this court has passed an order and grant application and ordered to proceed matter by party.

Thereafter, the defendant appeared before this court and filed reply vide Exh.12. He has submitted that defendants are not entitled to payment Rs.21,61,2968/-. It is submitted that defendant carries on business in the name of a proprietary concern and is engaged in the business of trading in cotton bales and textile. Further, the plaintiff was introduced to defendant by Mr.Vijay Bhatt and Mr.Suryakant Bhatt who are carrying on business as broker. Thereafter, in the

month of August, 2019 the defendant purchased cotton from the plaintiff for trading purpose. The plaintiff has raised two invoices dated 10.08.2019 and 18.08.2019 for total amount of Rs.39,61,968/-. When the plaintiff supplied cotton from the month of August, 2018 for which the invoices were raised, the defendant realized that the batch of cotton supplied was of inferior quality. The defendant started receiving complaints regarding the quality of cotton from the manufacturers to whom the defendant was supplying this cotton. As soon as the defendant received these complaints, the issue was taken up with the plaintiff who was called upon to replace the inferior quality with good quality goods. The plaintiff has assured that they will accept a negotiated amount as payment on account of the inferior quality of the goods which is lesser than the amount stated in the invoices. Further, defendant made payments in August and September, 2019. The defendant submits that payment of Rs.18,00,000/- has been duly received by the plaintiff. This payment was towards full and final settlement of the aforesaid invoices as agreed between the plaintiff and defendant. Hence, defendant does not owe the plaintiff any more money in lieu of the aforesaid

invoices. Hence, the defendant did not hear from the plaintiff regarding any payment until the last week of November, 2019. The plaintiff was accepting part payment of Rs.18,00,000/- as agreed between the parties. However, suddenly in the month of November, instead of providing a credit note for Rs.21,61,968/- to the defendant. It is submitted that plaintiff has acted wrongfully and attempted to take law into his own hands. Further, the plaintiff's representatives will try to cause harm to the defendant and prejudice the day to day operations of the defendant. Therefore, the present suit is required to be rejected.

3. The plaintiff has following oral as well as documentary evidence in support of its case.

Plaintiff's oral evidence :

Sr. No.	Particulars	Exh.
1	Affidavit of examination-in-chief of witness Mr. Shaileshkumar Thakarshibhai Thakkar	23
2	Deposition of witness Vijaykumar Navnitray Bhatt	29

Plaintiff's documentary evidence :

Sr. No.	Particulars	Exh.
1	Tax invoice dated 10.08.2019	24
2	Tax invoice dated 18.08.2019	25
3	Copy of account of Royss Traders	26
4	Copy of suit filed before the Civil Court, Bombay	27
5	Copy of Form G	28
6	Copy of purchase order of bale of cotton from defendant dated 08.08.2019	30
7	Copy of purchase order of bale of cotton from defendant dated 17.08.2019	31

4. The Plaintiff has given closing pursis vide Ex- 33. After that matter was fixed for evidence of defendant but inspite of giving enough opportunities, defendant has not appeared before the court nor produced any evidence hence, my Ld. Predecessor had closed the right of defendant to produced evidence by order below Exh.1.
5. My predecessor has framed the Issues vide Ex.15. Which are as under.
- 1) શું વાદી પુરવાર કરે છે કે, વાદી પેઢી નોંધાયેલી પેઢી છે અને વિરમગામ તાલુકા મુકામે

કાલા કપાસ રૂની ગાંસડીઓ વિગેરેનો ધંધો કરે છે અને વાદી પેઢીના ભાગીદાર છે ?

- 2) શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીએ વાદી પાસેથી રૂની ગાંસડીઓ ખરીદેલ અને પ્રતિવાદી પાસેથી તે પેટે રૂ.૨૨,૬૨,૭૬૮/-નું લેણું છે ?
- 3) શું વાદી માંગ્યા મુજબનું વ્યાજ મેળવવા હક્કદાર છે ?
- 4) શું પ્રતિવાદી પુરવાર કરે છે કે, વાદીએ દાવો ખોટી રીતે કોઈ પણ વ્યાજબી કારણ વગરનો કરેલ છે ?
- 5) શું હુકમ અને હુકમનામું ?

6. My findings for the above issues are as under :

1. In Affirmative
2. In partly Affirmative
3. In partly Affirmative. 6% p.a. interest
4. In Negative
5. As per Final Order.

REASONS

Issue Nos.1 to 5 all together :-

Since the above issues are interlinked and interconnected, to avoid repetition of the discussed facts, the same are being discussed together.

7. First of all, we have to discuss the evidence submitted by the

plaintiff. The plaintiff has submitted affidavit in chief vide Exh.21 in which he has submitted all the facts as per the plaint. Further, mainly he has submitted that the defendant is used to purchase goods from him and the defendant has purchased goods of Rs.19,66,985/- and Rs.19,94,983/-. The invoice were generated and for the payment of the said dues the defendant has paid Rs.18,00,000/- thus, the outstanding amount is Rs.21,61,968/- and he further states that he is entitled to get the amount with interest @ 15%. So, he is entitled to get Rs.22,62,768/- from the defendant. He further states that the plaintiff has frequently demanded for the pending dues but it was not paid. Instead of paying the dues, the defendant has filed summary suit No.3203/2019 before the Hon'ble City Civil Court, Bombay. He also produced the copy of the said suit. He further states that the suit before the Bombay court is not tenable hence, he is entitled to get the due amount with interest hence, he prays for the decree in his favour.

The witness was cross-examined by the defendant in which he has admitted that the plaintiff is doing business of cotton and he has Soda confirmation note for proof of purchase of goods. Further, he admits

that he has received payment of Rs.7,00,000/- on 14.08.2019 and Rs.5,00,000/- on 22.08.2019. Further, he denies that the goods was of inferior quality. Further, he states that he has visited defendant's house for recovery of dues on 17.10.2019 with an agent but he denies that he has not visited Mumbai on 20.09.2019. Further, he admits that he has not given any notice to defendant.

8. In support of the pleadings, the plaintiff has examined witness Vijaykumar Bhatt vide Exh.29. In his deposition, he has submitted that he is a broker of the suit transactions. Further, he has deposed that he knows plaintiff and defendant. He submitted that he had finalized the order of two trucks of bale of cotton between plaintiff and defendant and sent the *soda notes* to both the parties. He further submitted that *soda note* of 08.08.2019 was signed by him and the said notes was for 98 bales of cotton. In that note payment condition is also mentioned i.e. payment within 30 days after getting goods. The said goods was sent to the spinning mill at Dholka. The second *soda* between plaintiff and defendant was on 17.08.2019. He further submitted that the defendant

had not complained to him about the inferior quality of goods. He further submitted that he along with the partner of plaintiff firm went to Mumbai for recovery of pending amount.

In his cross-examination, he has admitted that the evidence regarding transaction of goods has been produced on record. He further admitted that Shri Ram Cotton and Royal Traders were not known each other. He admitted that two trucks goods were sent. He also admitted that payment of first truck was pending and sent a second truck. He admitted that Royal Traders had filed suit against plaintiff in Mumbai Court. Thereafter, plaintiff has filed present suit. He admitted that letter vide Exh.30 is a broker's letter of Ganesh Cotton. He denied that he had prepared the said letter on the say of plaintiff. He denied that he has given deposition in the support of plaintiff.

9. After that the plaintiff has not produced more evidence and submitted closing pursis vide Exh.33.
10. Despite giving sufficient opportunities to the defendant, he neither

produced any evidence nor filed any application for adjournment. Hence, the right to file evidence was closed on 20.08.2024. Then after, the matter was placed on arguments.

11. Now looking to above mentioned evidence, we discussed the issues as under.

As per the plaint of the plaintiff, plaintiff is a registered partnership firm registered under Indian Partnership Act. This partnership firm is doing business of cotton. Now so far the Issue no. 1 is concern, in affidavit of chief examination, Mr.Thakkar Shaileshkumar Thakarshibhai has averred on oath that he is a partner of partnership firm and he is a partner of plaintiff firm which is not challenged by the defendant. Further, plaintiff has produced certificate of Register of Firm “Form - G” which is duly digitally signed by Commercial Tax Department in which present plaintiff is a firm registered under the Act. Hence, looking to this document plaintiff has successfully proved that it is a registered partnership firm. Hence, I answered issue No.1 in affirmative.

12. So far as issue No.2 and 4 are concern, plaintiff has produced copies of invoices vide Exh.24 & 25 and account statements vide Exh.26 which is duly supported by affidavit of examination-in-chief by plaintiff. The defendant had taken plea that the goods was supplied to him which was of inferior quality hence, he has preferred a suit in Bombay City Civil Court vide Suit No.3203/2019. But, he has not submitted any oral or documentary evidence to prove this fact. Further, it is contented that present suit is barred by principle of res-judicata but the defendant has not submitted the copy of the suit or judgment of that suit. Further, the suit is still pending before Hon'ble City Civil Court, Bombay. Hence, the res-judicata will not apply to present suit. Further, the defendant has not produced any evidence before this court, hence, there is no any oral or documentary evidence in support of pleading of defendant. Therefore, there is no reason to disbelieve the evidence of plaintiff. Now, the plaintiff has asked for Rs.21,61,968/- along with interest of Rs.1,00,800/- so, in total Rs.22,62,768/-. But, I am of the opinion that the interest is unreasonable as it is discussed in detailed in discussion of Issue No.3 as the plaintiff is entitled for Rs.21,61,968/-. Thus, I answered issue No.2 in partly affirmative and looking to the

record, defendant has not produced any oral or documentary evidence. Hence, mere plea cannot stand without any evidence. Therefore, issue no.4 in negative.

13. Now so far as issue no.3 which is pertaining to the rate of interest on the outstanding due amount is concerned, plaintiff has claimed interest @ 15% thereon which is on higher side. However, plaintiff is doing business to supply bale of cotton to the defendant at large, hence, considering this aspect, and in the facts and circumstances of this case as well, this Court is of the view that this rate of interest is very high, but according to Section 34 of CPC, the plaintiff is entitled to get interest @ 6% p.a. and not more than that, hence issue no.3 is held in partly affirmative accordingly.

14. It is also not disputed by other side, So I have no reason to disbelieve these documents. Furthermore As per this document the due amount is not paid up. So the plaintiff is entitled to recover the said amount from the defendants. As **it is well settled that party has to prove each and**

every pleading by way of cogent document, but here the defendant has chosen not to defend the suit. Therefore, this Court held **issue no.3** are in the affirmative.

15. After hearing L.A. for the plaintiff, after appreciating evidence on record and in view of the findings of issue no.1 to 4, this Court pass following final order under issue no.5 .

Final Order

- (i) The present suit of the plaintiff is hereby **partly allowed**.
- (ii) The **defendant** is directed **to pay** sum of **Rs.21,61,968.00 Ps.** (In words- Rupees Twenty One lacs Sixty One Thousand Nine Hundred Sixty eight only) along with the **interest @ 6 %** per annum to the plaintiff, from the date of filing of this suit, till payment.
- (iii) The **defendant has to bear his own cost of the suit** and he is further directed to **pay the costs** of this suit to the plaintiff.
- (iv) **Decree** is to be drawn accordingly.

Signed and pronounced in the open court on December 30th, 2025.

Date : 30/12/2025
Place: Viramgam.

(Rajul Bansilal Marfatiya)
Principal Senior Civil Judge,
Viramgam, Dist.Ahmedabad.
Judge Code No : GJ00633.