Received on :	12/12/2023
Registered on :	12/12/2023
Decided on :	30/12/2025

<u>In the Court of 15th Additional Senior Civil Judge,</u>
<u>(H. H. Gupta Saheb), at: Rajkot</u>

<u>Special Civil Suit No. 124/2023</u>
<u>Exh. 31</u>

<u>Plaintiff :-</u>

Hasti Cotspin through its Proprietor

Shri Jayantilal Shivlal Kalavadiya

Age: 55, Occu: Business;

Reg. Officer Address:-

Shop No. 10, Anand Plaza, Near Raiya Chokdi,

150 Feet Ring Road, Rajkot.

<u>Versus</u>

Defendants :-

1. **Himatsingka Fibers,**
   (A Division of Himatsingka Seide Ltd)
2. **Mr. Shrikant Himatsingka**
   (Director of Himatsingka Fibers)
   (A Division of Himatsingka Seide Ltd)
   Age: Adult, Occu: Business;
3. **Mr. Dinesh Kumar Himatsingka**
   (Director of Himatsingka Fibers)

(A Division of Himatsingka Seide Ltd)

Age: Adult, Occu: Business;

Address:-

KIADB Growth Center, Industrial Area, Hanumanthpura, Gorur Road, Hassan, Karnataka- 573201.

<u>Appearances:</u>

S. N. Gohil Learned Advocate for the Plaintiff.

Suit proceed Ex-Party against the defendants.

<u>Subject: Suit for recovery of Rs. 82,66,747.97/-</u>

J U D G M E N T

1. The facts of the Plaintiff suit can be narrated as under.

The Plaintiff Is doing business under the name of Hasti Cotspin having its registered officer at the above mentioned address. Also, the Plaintiff is engaged in the business of manufacturing and selling Cotton Yarn. Defendant No. 1 is a Limited Company and Defendants No. 2 and 3 are directors of the Defendant No. 1 Company. The Defendants approached the Plaintiff to purchase Cotton Yarn and they purchased Cotton Yarn for a total amount of Rs. 82,75,023/- on credit from the Plaintiff with the invoices mentioned below.

Sr.	Invoice No.	Invoice Date	Amount Rs.
1	YT/143	03/08/2021	27,69,038/-
2	YT/148	08/08/2021	27,54,138/-
3	YT/151	14/08/2021	27,51,847/-
			82,75,023/-

The Plaintiff has given all the above mentioned invoices to the Defendants. Thus, out of the said amount, excluding the amount of TDS Rs. 8,275.03/- deposited by Defendants, the Plaintiff has a total amount of Rs. 82,66,747.97/- due against the defendant. The Defendant's ledger account is maintained in the Plaintiff's firm. The Plaintiff is owed Rs. 82,66,747.97/- by the Defendants. Despite the Plaintiff having asked the Defendants several times to pay the above due amount, but the Defendants have not paid the due outstanding amount to the Plaintiff till date. Therefore, the Plaintiff sent a legal notice to the Defendants through the advocate on 19/04/2023 through Registered AD. Despite the said legal notice being duly served upon the Defendants, the Defendants have not paid the above due amount to the Plaintiff.

The cause of action to file this suit has arisen when the Defendants have not paid the due outstanding amount to the Plaintiff and therefore the Plaintiff had sent legal notice to the Defendant on 19/04/2023, which was duly served upon the Defendants but the Defendants have not paid the due outstanding amount to the Plaintiff, and therefore the Plaintiff has filed this suit for recovery of due outstanding amount from the Defendant.

By filing this suit, the Plaintiff has prayed before this Court to pass a decree in favour of the Plaintiff and against the Defendants to pay the sum of Rs. 82,66,747.97/- with interest at 24% per annum till the recovery of the outstanding amount and the Plaintiff also prayed to pay the cost of the suit from the Defendant.

2. The summons of the suit have duly served to the Defendant. But neither the Defendants nor their Ld. Advocate appeared before this Court and not filed Written Statement during the stipulated time period. Hence this Court has passed and order vide Exh. 8 dated 10/10/2024 to proceed this Suit ex-party against the Defendants. Hence, this suit proceed ex-party against the Defendant.

3. In support of the suit, the Plaintiff has produced the following oral as well as documentary evidences:

ORAL EVIDENCES

Sr.	Name of Witness	Exh.
1	An Affidavit in examination in chief of Plaintiff Jayantilal Shivlal Kalavadiya	13

DOCUMENTARY EVIDENCES

Sr.	Documents	Exh.
1	Invoice No. YT/143	16
2	E-Way Bill	17
3	Invoice No. YT/148	18
4	E-Way Bill	19
5	Invoice No. YT/151	20
6	E-Way Vill	21
7	Ledger Account Statement	22
8	Legal Notice	23

9	Money Receipts	24 to 26
10	Online Track Receipts	27 to 29

4. The Plaintiff has filed Closing Pursis vide Exh. 30.

5. After issuing Summons to the Defendants, neither the Defendants nor their Ld. Advocate appeared before the Court and not filed any Written Statement or contended the suit within the stipulated time period. Hence, as per the order passed below Exh. 8 on dated 10/10/2024 the suit is proceeded ex-party against the Defendants. Hence, there is no argument on Defendants side.

6. Heard learned advocate for the Plaintiff.

7. On the basis of the pleadings and evidence produced in support of the pleadings, the Court has framed issues vide Exh. 9 on dated 28/11/2024.

I S S U E S

1. Whether the Plaintiff proves that the Defendants have purchased goods, worth Rs. 82,75,023 from him and pain only Rs. 8275.03 towards the same ?

2. Whether the Plaintiff proves that Rs. 82,66,747.97 is due from the Defendant as against the sale ?

3. Whether the Plaintiff proves that he is entitled to recover Rs. 82,66,747.97 from the Defendant ?

4. Whether the Plaintiff is entitled to get interest ? If yes, at what rate ?

5. What order and decree?

8. My answer to the above issues are as under.

1. In the affirmative.

2. In the affirmative.

3. In the affirmative.

4. In the partly affirmative.

5. As per final order**.**

R E A S O N S

Issue No. 1 & 2

9. These two issues are inter connected with each other, for the sake of brevity, to avoid the repetition and to save the precious time of the Court, these four issues are discussed here together. To prove the said issues, the burden is lying upon the Plaintiff and to prove the same the Plaintiff is relying upon the documents produced vide Exh. 16 to 29. The documentary evidences vide Exh. 16 to 21 i.e. Invoices and E-Way Bill, Exh. 22 Ledger Account Account of Statement Defendant maintained by the Plaintiff, looking to the said documentary evidences, it transpires that the Defendants have purchase Cotton Yarn for a total amount of Rs. 82,75,023/- on credit from the Plaintiff with the Invoices No. YT/143, YT/148 and YT/151. Thereafter, the Defendants have deposited amount of TDS Rs. 8,275.03/- to the Plaintiff. Considering the ledger account statement of Defendant maintained by the Plaintiff, it came on record that Defendants have paid Rs. 8,275.03/- to the Plaintiff and thereafter, the Defendants have not paid any amount of due outstanding to the Plaintiff. Hence, it proves that excluding the amount of TDS Rs. 8,275.03/- deposited by Defendant, the Plaintiff has a total amount of Rs. 82,66,747.97/- is due against the Defendant towards sale goods. Hence, it looking to the said submission of the Plaintiff and documentary evidences on record produced by the Plaintiff it proved that the Defendants have purchased goods worth Rs. 82,75,023/- from the Plaintiff and the Defendants have paid only Rs. 8,275.03/- towards the same to the defendant, and it is also proved that Rs. 82,66,747.97/- is due from the Defendant as against the sale of good. Hence, my answer for **Issue No. 1 & 2 is in the "Affirmative".**

Issue No. 3

10. To prove the said issues, the burden is lying upon the Plaintiff and to prove the same the Plaintiff is relying upon the document produced vide Exh. 16 to 29. As per the submission of the Plaintiff and above discussion and documentary evidences produced by the Plaintiff vide Exh. 16 to 29 it transpires that the Defendants have purchases Cotton Yarn for a total amount of Rs. 82,75,023/- on credit from the Plaintiff and as per the ledger account statement it appears that Defendants have paid Rs. 8,275.03/- to the Plaintiff and excluding the amount of TDS Rs. 8,275.03/- deposited by Defendants, the Plaintiff has a total amount of Rs. 82,66,747.97/- due against the Defendants towards sale goods. Hence, looking to the said submission of the Plaintiff and documentary evidences on record produced by the Plaintiff it provs that the Defendants have purchased goods worth Rs. 82,75,023/- from the Plaintiff and the Defendants have paid only Rs. 8,275.03/- to the defendant, and it is also proved that Rs. 82,66,747.97/- is due from the defendant towards the sale of good. Considering the facts and circumstances of this case and keeping in mind the discussions made hereinabove, the Plaintiff has proved the case against the Defendants. Further the defendants have not come forward to contest the pleadings of the Plaintiff and therefore there is no any reason to disbelieve the pleadings of the Plaintiff. Therefore, considering the averment made in the plaint as well as evidences produced by the Plaintiff that, the Plaintiff is entitled to get relief as prayed in the plaint. Therefore, it proved that the Plaintiff is entitle to recover Rs. 82,66,747.97/- from the defendants. Hence, **I answer Issue No. 3 in the Affirmative.**

Issue No. 4

12. To prove the issue No. 4, the burden is lying upon the Plaintiff and the defendants has not rebutted the said issue and this issue is relating to rate of interest and according to plaint, the Plaintiff has claimed the interest at the rate of 24% per annum on outstanding due amount. Before granting interest on the aforesaid claim of the Plaintiff, relevant provision of Section 34 of the Code of Civil Procedure, 1908 is also required to be taken in to consideration. Section

34 of the code is relevant for deciding the rate of interest. It is provided therein that when money decree is passed rate of interest does not exceeding 6% per annum, while the decree is of a commercial transaction interest may exceed 6% and where there is no contractual rate then rate of nationalized bank is to be granted. In the present case, there is no any specific condition or documentary evidence shows to charge interest at 24% but as it is a business transaction between parties and therefore, taking the judicial notice of the prevailing rate of interest, **if 6%** interest per annum on the said due amount is awarded then it will be just and fair interest rate under *Section 34 of the Civil Procedure Code, 1908.* Further the Defendants have not come forward to contest the pleading of the Plaintiff and therefore there is no any reason to disbelieve the pleading of the Plaintiff. Hence, I answered **Issue No. 4 in the "Partly Affirmative".**

Issue No. 5

13. Considering the facts and circumstances of this case and keeping in mind the discussions made hereinabove, the Court is of the opinion that Plaintiff has proved the case against the defendants. Further, considering the averments made in the plaint as well as oral as well as documentary evidences produced by the Plaintiff, the Plaintiff succeeding the suit and has proved issue No. 1 to 4 by his evidence and therefore, Plaintiff is entitle to get relief prayed in the plaint. Further the defendants have not come forward to contest the pleadings of the Plaintiff and therefore there is no any reason to disbelieve the pleadings of the Plaintiff. Hence, the Plaintiff is entitled to get outstanding amount of **Rs. 82,66,747.97/-** from the defendant and in view of above discussion and considering the facts of the plaint, Plaintiff suit is required to allow. Hence, my answer for **Issue No. 1 to 3 in Affirmative and Issue No. 4 in the Partly Affirmative.** And for answer of **Issue No. 5**, I pass the following final order in the interest of justice.

<u>O R D E R</u>

1. The present suit of the Plaintiff is hereby partly allowed.

2. The defendants are hereby ordered to pay an amount of **Rs. 82,66,747.97/-** (Rupees Eighty Two Lakh Sixty Six Thousand Seven Hundred Forty Seven and Ninety Seven Paisa only) jointly or severally with an interest **6% p.a** to the Plaintiff from the date of filing of this suit till payment of decreed amount.

3. The defendant is ordered to bear their own cost and cost of the Plaintiff.

4. Decree to be drawn accordingly.

Signed and pronounced in the open court today on **30th December, 2025** at Rajkot.

Place : Rajkot
Date : 30/12/2025

(Harish Hanumanprasad Gupta)
15th Addl. Sr. Civil Judge,
<u>Rajkot</u>
UIC No.- GJ01182