

KADG010033602022



Presented on : 01-09-2022
Registered on : 01-09-2022
Decided on : 28-03-2026
Duration : 3 years, 6 months, 27 days

**IN THE COURT OF
PRL DISTRICT AND SESSIONS JUDGE DAVANGERE AT
DAVANGERE, DAVANGERE
Presided Over by SMT. VELA D.K.**

Com.O.S./59/2022

Plaintiff : -

Lalith Kumar
Age: 30
Occupation :
Address: R/o M/s Shivashakti
Swadeshi Bazaar, No. 464/34, M.G.
Road, Davanagere.

(By Sri. J.N.V., Advocate)

VERSUS

Defendant/s: -

1. Pacific Foods
A Company incorporated under the
provisions of the Indian Companies
Act, Represented by its,

Chairman and Managing Director,
GAT NO. 225,
Pune-Satara road,
Near Mcdonalds Varve Kh,
PUNE-412205

2. The Authorised Signatory
Pacific foods,
A Company incorporated under
the provisions of the Indian
Companies Act,
Regd., Off : GAT No.225,
Pune-Satara road,
Near Mcdonalds Varve Kh,
PUNE-412205
3. Smt.Priya Vaman Savant,
W/o. Vaman Savanth,
Age : Major,
Prop: Pacific Foods,
Regd.Office, GAT No.225,
Pune, Satara Road,
Pune - 412205.
4. Anirudh Banerjee
S/o. Ashok Kumar,
Aged 37 years,
No.A 90, LIG Colony,
Near Rameshwar Mandir,
East Nimar,
Khandwa - 450001,
Madhya Pradesh.

(D1 to 4 By: Sri. S.N., Advocate)

Date of institution of the Suit : 01.09.2022

Nature of the suit (suit on pronote, suit
for declaration and possession suit for
injunction, etc) : Money suit

Date of commencement of recording of evidence:	21.08.2025		
Date on which the Judgment was pronounced:	28.03.2026		
Total duration	Year/s 03	Month/s 06	Day/s 18

**Principal District & Sessions Judge,
Davanagere.**

ORDER ON PRELIMINARY ISSUE NO.4

1. This is a suit for recovery of money. The case of the plaintiff is that, the plaintiff has been in business in the name and style as M/s Shivashakti Swadeshi Bazaar at 464/34 MG Road, Davanagere for the last 5 years, and dealing with food grains and other essential commodities and Chocolates. The defendant No.1 is said to be a Company incorporated under the provisions of the Indian Companies Act, 1956, manufacturing Chocolates by name Candy King. The day to day affairs of the defendant No.1 company is managed by its Chairman and Managing Director and defendant No.2 is the authorized signatory to the plaintiff. The defendants being in need of super stockiest (CSA) for the entire Karnataka State, approached the plaintiff and offered to appoint the plaintiff

as super stockist for the goods manufactured by the defendants company and accordingly the defendants have entered into an agreement with the plaintiff. The defendants got prepared said agreement and have sent the same to the plaintiff by WhatsApp. The defendant No.2 to have signed the agreement dated 28.8.2021 as authorized signatory for and on behalf of defendant No.1 company. Though an assurance was made to the plaintiff that the agreement would be sent to the plaintiff, the agreement was not sent to the plaintiff.

2. In terms of the said Agreement the plaintiff had to act as super stockiest of the defendant No.1 and also the plaintiff had agreed to receive the goods, make provision for safe storage and dispatching the same to super stockist as per order procured by the company through its marketing team. Further, the defendants had to collect orders for the plaintiff to supply the goods consigned to the plaintiff by the company. The format was sent by the defendant No.1 to the plaintiff to appoint super stockist and in consultation with the defendants super stockists were appointed for distribution of the goods manufactured by defendant No.1 company in Chitradurga, Bellary, Tumkur, Davanagere, Channagiri, Hubli and Mandya city. The plaintiff duly intimated the appointment of super stockists to the defendants, and as per terms of the agreement the defendants had to collect orders through their marketing team for the plaintiff to supply the same to the

super stockists. In terms of the said Agreement, the defendants to have stipulated that the company shall accept the payment through crossed cheque/demand draft in favour of Pacific Foods or through On-Line transfer to the account mentioned in the agreement. By virtue of the Agreement, the plaintiff had made advance payment of Rs.2,00,667/- on 31.08.2021 to the defendant No.1 Pacific Foods Company A/c., No.3616478794. Accordingly, an amount of Rs.4 Lakhs was remitted by the plaintiff on 24.09.2021 to the account as per Agreement. Again on 06.11.2021 the plaintiff remitted Rs.2 Lakhs to the account of the defendant No.1 company and in turn the defendants have encashed the amount, and thereby the plaintiff has paid Rs.8,00,667/- to the defendants.

3. The defendants booked goods worth Rs.1,78,443.37 paise including tax on 09.09.2021 vide invoice dated 01.09.2021. Again the defendants booked goods worth Rs.4,20,160.25 paise including tax on 19.10.2021 vide invoice dated 30.09.2021. In all the defendants have sent goods worth Rs.5,98,603.62 paise as against the amount of Rs.8,00,667/- paid by the plaintiff, and thereby the defendants are said to be in possession of Rs.2,02,063.38 paise of the plaintiff. The defendants ought to have collected the orders through their marketing team for the plaintiff to distribute the same to super stockist by the plaintiff. The goods sent worth Rs.5,98,603.62 by the defendants, were able to procure

procure orders to the tune of Rs.2,98,603/- only for the plaintiff to deliver the same as CSA of the company. The defendants are said to have miserably failed to procure orders for the plaintiff to supply the goods as per terms of the Agreement, whereby the goods worth Rs.3 Lakhs were lying idle with the plaintiff since for the last 5 months.

4. On lapse of time, the goods consisting of Chocolates melt resulting in change of flavour. Therefore the plaintiff had repeatedly requested the defendants to procure orders for the plaintiff to supply the goods and to clear the existing stock through the marketing team of the defendants. Despite repeated requests the defendants had not procured orders for the supply of goods and to clear the stock, and in view of the nature of the goods the plaintiff had requested the defendants to take back the goods and to return the value of the goods as well as the amount withheld by the defendants that belonged to the plaintiff. There was said to be no response from the defendants and the plaintiff had informed the defendants stating to book the goods to Pune, but defendant No.1 had stated not to receive the goods. With no other alternative, the plaintiff got issued notice to the defendants.

5. The defendants are said to have withheld an amount of Rs.2,02,063.38 paise of the plaintiff without any valid reason. There has been huge benefit out of the amount belonging to

the plaintiff, and the defendants are liable to compensate the plaintiff by paying interest at the rate of 18% per annum. The defendants are said to be unable to procure the orders through their marketing team to the plaintiff to distribute the goods to the company. Therefore the defendants are liable to pay Rs.2,02,063.38 with interest @ 18% Per Annum as well as the value of the goods of Rs.3,00,000/- together with interest @ 18% Per Annum by taking back the goods lying idle with the plaintiff since last 3 months as on the date of notice, within 10 days from the date of service of notice dated 27.1.2022 on the defendants. That notice was issued to the Registered office at GAT No.638, and intentionally it was avoided by the defendants and had managed to get the endorsement as door lock. The notice sent to the defendants by ordinary post has been duly served, as the plaintiff not received back the same. The defendants despite service of notice, not complied with the demands made in the notice. Therefore the plaintiff with no other alternative to have filed suit.

The amount due by the defendants to the plaintiff is as follows : -

a	Excess amount withheld by the defendants:	Rs.2,02,063.38
b	Interest on Rs.2,02,063.38 at the rate of 18% per annum from	Rs.12,125.00

	6.11.21 up to 23.3.22 amounts to	
c	Value of the goods	Rs.3,00,000.00
d	Interest on Rs.3,00,000/- @ 18% PA from 24.9.21 up to 23.3.22 amounts to	Rs.27,000.00
e	Notice fee and charges	Rs.20,000.00
	Total	5,61,188.38

Hence the the plaintiff has filed this suit.

6. The defendants filed Written Statement and specifically contended that, in reality the pacific Foods with whom the plaintiff in business is a sole proprietary firm whose proprietor is Priya Vaman Samant PAN No.CYDPS3351K, GST No.27CYDPS3351K1Z2. The Managing Director of Pacific Foods company as per plaintiff is one Mr. Arirudha Banerjee. But actually said Anirudha Banerjee is just an employee of Pacific Foods and he is not legally responsible for any dispute between both the firms. The plaintiff had placed first two orders of Rs.5,98,603/- out of that 50% stock to have been liquidated by the Marketing Team of Pacific Foods. Under Clause 19 of Agreement CSA 50% stock has to be maintained and hence the plaintiff given orders for Rs.5,05,188.50 and advanced amount of Rs.2,00,000/- on 6.11.2021, and the defendants got the material ready and informed the plaintiff

to release the balance payment, and since the plaintiff not paid the balance amount the Pacific Foods has withdrawn the marketing team from the said territory. It is the Pacific Foods has incurred financial loss as the material prepared for the plaintiff was not lifted by the plaintiff intentionally so as to harm the company. The Company had not given any written assurance that they will take back the non-moving stock. In fact in the invoice there is clear mention that the goods once sold will not be taken back in any case. Therefore the plaintiff under Clause 20 is said to have no right to file any case in Karnataka Court and that the jurisdiction to be at Pune Court. The defendants by denying all the other averments in the plaint have sought to dismiss the suit.

7. My Predecessor in office had framed the following issues :-

I S S U E S

1. Whether the plaintiff proves that in pursuance of agreement entered between him and the defendant No.1 company, he has made advance payment of Rs.2,00,667/-on 31.08.2021, Rs.4,00,000/- on 24.09.2021 and Rs.2,00,000/- on 06.11.2021, in all Rs.8,00,667/- to the defendant No.1 company towards purchase of goods, but the defendant No.1 company has only supplied goods worth Rs.4,20,160.25Ps and

remaining Rs.2,02,063.38Ps left with the defendant No.1 company?

2. Whether the plaintiff further proves that the defendants in spite of repeated requests has withheld Rs.2,02,063.38Ps belonging to the plaintiff without any just and valid cause?
3. Whether the defendant proves that as per Clause No.19 of the agreement, CSA should maintain 50% of stock and plaintiff placed order for goods worth Rs.5,05,188.50 by paying advance amount of Rs.2,00,000/ on 06.11.2021, for which the defendant No.1 get the material ready and informed the plaintiff to release the balance payment, but he did not make payment, as such, it has incurred loss, since the material prepared for the plaintiff was not lifted by him?
4. Whether the defendant proves that this court has no jurisdiction to try the suit?
5. Whether the plaintiff is entitled to recover Rs.5,61,188.38Ps with current and future interest at the rate of 18% p.a. from the date of suit, till its realization?
6. What Order or Decree ?

8. In order to prove its case the plaintiff got examined himself as PW.1 and got marked the documents as Ex.P.1 to 7. There is no defendant evidence in the present case.

9. Heard arguments.

10. The findings on the above issues are as under :-

Issue No.1: Does no survive for consideration,

Issue No.2: Does no survive for consideration,

Issue No.3: Does no survive for consideration,

Issue No.4: In the Affirmative

Issue No.5: Does no survive for consideration,

Issue No.6: As per final order

for the following :-

REASONS.

11. **Issue No.4** : This is issue is firstly taken up as it pertains to the matter of jurisdiction to try the suit by this court. The defendant has taken up specific contention that this court not to have the jurisdiction to try the suit. It was the leaned counsel for the defendant that on 24.03.2026 has produced the copy of agreement dated 28.08.2021.

12. The admitted facts in the evidence of PW.1 therefore go to show that, apart from the invoices at Ex.P.1 to 3, there is no document in regard to WhatsApp message conveyed is produced, stating that materials lying unused and that would

result in diminishing of its value. Further, PW.1 has also stated that he had asked through WhatsApp chat to the defendant No.1 to take back the un-used materials and that portion of the evidence reads as follows : -

ಪ್ರತಿವಾದಿಗೆ ಉಳಿದಿರುವಂತಹ Materials ನ್ನು ವಾಪಸ್ಸು ತೆಗೆದುಕೊಂಡು ಹೋಗಿ ಅಂತ ದಾಖಲೆ ಇಲ್ಲ whatsapp chat ಇರಬಹುದು. Materials ನ್ನು ನಾವೇ ಪ್ಯಾಕ್ ಮಾಡಿ ಪುಣೆಗೆ ಕಳುಹಿಸುವ ಬಗ್ಗೆ ದಾಖಲೆ ಹಾಜರುಪಡಿಸಿಲ್ಲ. ನನ್ನ ಕಡೆ ಉಳಿದಿರುವ materials ಬಗ್ಗೆ ದಾಖಲೆ ಹಾಜರುಪಡಿಸಿಲ್ಲ. ಇವತ್ತಿ ನವರೆಗೂ stock ನನ್ನ ಹತ್ತಿರ ಇದೆ.

13. The defendants in their written statement have referred to the various clauses of the said agreement. Specifically the defendant has referred clause 20 of the that agreement and contended that the plaintiff not to have right to file the case against the Pacific Food in Karnataka since as per the clause 20, for any dispute the Pune court to have jurisdiction. In the course of oral evidence PW.,1 has admitted that

"ನಮ್ಮ ವ್ಯವಹಾರದಲ್ಲಿ ಯಾವುದೇ ವಿವಾದ ಬಂದಲ್ಲಿ ಪ್ರಕರಣವನ್ನು ಪುಣೆಯಲ್ಲಿ ದಾಖಲು ಮಾಡಬೇಕು ಅಂತ ಇದೆ ಅಂದರೆ ನಿಜ. ಸಾಕ್ಷಿ ದಾರರು ಹೇಳುತ್ತಾರೆ ಪ್ರತಿವಾದಿ ದಾವಣಗೆರೆಗೆ ಬಂದು ವ್ಯವಹಾರವನ್ನು ಇಲ್ಲಿ ಮಾಡಿರುತ್ತಾರೆ ಅಂದರೆ ಪರಿಹಾರ ಪಡೆಯಲು ನಾನು ಅರ್ಹರಾಗಿಲ್ಲ ಅದರೆ ಸರಿಯಲ್ಲ."

14. Thus, on perusal of the averments of the plaint and contention of the written statement go to show that parties are aware about the agreement dated 28.08.2021. In spite of that it was only on 24.03.2026 that the copy of that agreement has been produced before the court. Clause 20 of the agreement reads as follows :

“ In case of any dispute Pune court will have the jurisdiction”.

At this juncture it is also necessary to note the invoices relied upon by the plaintiff at Ex.P.1 to 3 in the terms and condition clause 3, which states “subject to Maharashtra jurisdiction only”. In view of the specific clause in the agreement between the parties, this court does not have the jurisdiction to try this suit. Hence this issue is answered in the Affirmative.

15. **Issue No.1 to 3 and 5** : Since issue No.4 is answered in the Affirmative, holding that this court not to have jurisdiction to try this suit, for want of jurisdiction these issues do not survive for consideration.

16. Point No.6 : In view of the findings given on the Issues I proceed to pass the following : -

ORDER

Invoking Order 7 Rule 10(A) of CPC, the plaint is hereby ordered to be returned to the plaintiff.

The date fixed for returning the plaint is 08.04.2026. The plaintiff to appear before the court for receiving the plaint.

(Dictated to the Stenographer computerised by her, transcript corrected, revised, signed and then pronounced by me in the Open Court dated this the 28th day of March, 2026)

(VELA.D.K)
**Prl., District & Sessions Judge,
Davangere.**

A N N E X U R E

LIST OF WITNESSES EXAMINED FOR PLAINTIFF:-

PW-1: Lalith Kumar

LIST OF DOCUMENTS MARKED FOR PLAINTIFF:-

Ex.P1 to P.3: Invoices

Ex.P.4 :Legal notices

Ex.P5(a) : Legal notices

Ex.P6(a) : Legal notice

Ex.P7 : Bank Statement

LIST OF WITNESSES EXAMINED FOR DEFENDAN -

-NIL-

LIST OF DOCUMENTS MARKED FOR DEFENDANT -

-Nil -

Prl., District & Sessions Judge,
Davangere.