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Decided On	03-09-2024
Duration	9YRS,13DAYS



**IN THE COURT OF MRS.N.P.UNADKAT, JUDGE,
SMALL CAUSE COURT, AHMEDABAD**

SUMMARY SUIT NO.373 OF 2022(OLD CASE NO. 2092 OF 2015)

PLAINTIFF :

Shree Laxmi Traders through its Proprietor and
administrator of H.U.F; Harshad Baldevbhai Patel
Aged : 52 Years, Occupation : Business
Residing at :
9/A, Viratnagar, Bhuyangdev Char Rasta,
Sola Road, Ahmedabad - 380 014

v/s

DEFENDANT :

1. Krishna Megh Yarn Industries - Partnership Firm
2. Tushar Chandrakant Patel
3. Parag Chandrakant Patel
4. Bhrugesha Tushar Patel
5. Vaishali Parag Patel
All are residing at : 24/B/A, Arcahna Industrial
Estate, Opp. Ajit Mill, Rakhiyal, Ahmedabad

**Subject: Summary Suit for recovery of Rs.4,71,438/-
with interests and costs**

MRS. N.P. UNADKAT,

Appearances:

1. Ld. Advocate Ms. M. C. Shah for Plaintiff.
2. Ld. Advocate Mr. A. N. Patel for Defendant.

JUDGMENT**1] Plaintiff's case:**

The plaintiff has filed present suit against the defendants for recovery of Rs.4,71,438/- with interest at the rate of 21% p.a. under O.37, R.2 of C.P Code. Brief facts of the plaintiff's case are as under-

1.1] Plaintiff Harshad Baldevbhai Patel is the proprietor of Laxmi Traders and is doing business of selling Starch Powder. Defendant is a partnership firm, indulged in the business of manufacturing and selling yarn. Defendant had purchased starch powder from plaintiff on credit for 40 days. Bills of the same were issued by the plaintiff to the defendants. Accordingly, the goods were supplied to the defendants vide Delivery challans.

1.2] The details of the goods supplied are as under-

Sr.No	Bill Date	Bill No.	Bill Amount
1	02-07-2014	203	1,30,200/-
2	31-07-2014	223	1,33,875/-
3	01-09-2014	250	1,29,150/-
	TOTAL		3,93,225/-

1.3] The defendants failed to pay the outstanding amount towards purchased of goods. On 29-03-2013 plaintiff issued legal notice through RPAD to the defendants asking name to pay the due amount. Hence, plaintiff filed the suit prayed for the recovery of Rs.4,71,438/- alongwith interest 21% interest p.a. and cost from the defendants.

2] Service of notice to defendant:

Summons were served to the defendants. The defendants appeared through their advocate and filed leave to defend application at Exh.17. They have submitted as under -

- There is no dispute as regards to the goods purchased by the defendants from the plaintiff.
- However, the contentions of the agreement pertaining to interest at the rate of 21% is not true.
- Plaintiff has supplied goods of inferior quality and same was communicated to the plaintiff. He had assured orally that the same would be adjusted while settling the accounts. However, inspite of repeated reminders from the defendant, plaintiff did not settle the account and has filed false suit unreasonable amount of interest on bills amount.

- There is no agreement with regards to the interest and hence claim of the plaintiff should not be granted.
- Leave to defend application was conditionally granted by my learned predecessor judge on 10-04-2018 and defendants were directed to deposit sum of Rs.1,18,000/- within 30 days from the date of this order.
- Defendants had deposited the said amount on 22-06-2018 and had filed pursis on record vide Exh.27 to consider their leave to defend application as their written statement which was eventually recorded by the Hon'ble court.

3] Issues:

In light of the above facts and considering the pleadings on record, my Ld. predecessor Judge had framed issues vide Exh.28 on 03-08-2018 which are reproduced are as under -

1. Whether the plaintiff proves that he is entitled to get the amount as prayed for towards legal dues from the defendant as alleged?
2. Whether the plaintiff is entitled to get interest as alleged? If yes, at what rate?
3. Whether the plaintiff is entitled to get relief as prayed for?
4. What order and what decree?

3.2] My findings to the above issues are as under :

1. Partly in Affirmation.
2. Partly in Affirmation.
3. Partly in Affirmation.
4. As per final order.

4] Evidences:

4.1] In order to prove his case, plaintiff has produced following evidences on record -

(A) Oral Evidence :

Sr.No.	Name	Exhibit
1	Harshad Balvantbhai Patel	31

(B) Documentary Evidence :

Sr.No.	Description	Exhibit
1	Tax Invoice No.203 on 02-07-2014	34
2	Tax Invoice No.223 on 31-07-2014	35
3	Tax Invoice No.250 on 01-09-2014	36
4	Delivery Challan on 02-07-2014	37
5	Delivery Challan on 31-07-2014	38
6	Delivery Challan on 31-08-2014	39

(C) Closing pursis has been filed vide Exb.45.

4.2] Defendants evidence: Defendants have not adduced any evidence and hence their right to produce evidence was closed on 19-07-2024 vide Exh.54.

5] Arguments :

Learned advocate for the plaintiff Miss Manisha C. Shah has argued as under:

- Defendants have admitted the receipt of goods supplied by the plaintiff on 02-07-2014, 31-07-2014 and 01-09-2014.
- They have raised the defence that the goods were inferior quality. However, they have not produced any evidence regarding the same nor have filed any written complaint pertaining to the goods supplied by the plaintiff. Hence, this defence is not acceptable.
- Defendants have also raised the defence that there is no agreement with regards to the interest between the parties. However, bills produced on record at Exh.34 to 36 clearly depict the terms stating that 21% interest will be charged after due date. These bills have been signed by the supervisor of the defendant firm. Hence, these bills should be treated as written agreement with regards to interest.
- Defendants have not produced any evidence in support of their defence. Hence, suit of the plaintiff should be allowed and decree be passed accordingly.

6] Reasons and Discussions:

Heard the argument of the plaintiff. Perused the papers on record. Since all the issues are interconnected with each other, for the sake of convenience they are here discussed together-

6.1] The plaintiff has produced his examination-in-chief at Exh.31. He has deposed on oath and has recited the facts as mentioned in his pleadings. He has also placed his reliance on the documents produced on record vide Exh.34 to Exh.39 in support of his claim. Plaintiff was cross-examined by the Learned Advocate for the defendant at Exb.31. In his cross-examination he has admitted that apart from the invioecs at Exb.34 to 36, there is no written agreement as regards to interest. Also, the plaintiff is unaware as to who had signed the invoices or the delivery challans on behalf of defendant firm.

6.2] On perusing the papers on record, following facts emerges as under:

- Plaintiff is the proprietor of Laxmi Traders. He is doing business of selling starch powder.

- Defendants are partners of partnership firm Krishna Megh Yarn Industries which is into manufacturing and selling of yarns.
- Plaintiff and defendants had business relations with each other.
- Defendants had purchased starch powder from the plaintiff on 02-07-2014, 31-07-2014 and 01-09-2014 vide bill no.203, 223 and 250 which are produced on record at Exh.34 to 36.

6.3] Thus, in light of apparent admission by the defendant and on considering section 58 of Indian Evidence Act, it is concluded that the plaintiff had supplied goods to the defendant firm and the goods were accordingly received by the defendant firm.

6.4] On considering the entire evidence on record, there are two prime defences raised by the defendant. These are -

- (1) Plaintiff had supplied goods of inferior quality and
- (2) There is no written agreement as regards to the interest.

6.5] With regards to first defence raised, defendants have not produced any written complaint on record stating that the goods received were of inferior quality. There is no justification as to

why the same was not intimated to the plaintiff at the time of service of legal notice dated 29-3-2013. There is absolutely no believable evidence on record with regard to this defence as to whether the goods were returned or retained. Hence, the defence so raised by the defendants is not believable.

6.6] Thus, though defendant has denied the claim of the plaintiff, he has not produced any cogent or believable evidence on record to prove this defence. The court cannot lose sight of the fact that the those who take goods on credit are duty bound to repay the due amount. In order to curb such practices, law must protect innocent business dealers. Any lapse in such matters should be viewed seriously. **Thus, on perusing the entire record this court comes on definite conclusion that the plaintiff is entitled to recover sum of Rs.3,93,225/- towards the goods sold to the defendants.**

6.7] Coming to the question of interest. Plaintiff has claimed pre-litigation interest @ 21% p.a on the basis of bills produced at Exb.34 to 36. The plaintiff places his reliance on the term no.2 depicted in these bills. However, plaintiff is unaware as to who signed these invoices. As per the averment made during oral deposition plaintiff

believes that the superintendent/supervisor on behalf of the firm might have signed these invoices and delivery challans. Plaintiff has not clarified on record as to who signed these bills nor have examined the signatory of these bills on record. There is no written contract as regards to interest between the parties. Plaintiff fails to prove that the defendants have signed these bills. Thus, it is held that bills produced on record at Exh.34 to 36 are unilateral in nature. Hence, plaintiff is not entitled to claim pre-litigation interest.

6.8] The interest claimed by the plaintiff appears to be too high and unreasonable. Further, plaintiff has demanded interest @ 21% p.a after filing of the suit. As per Section 34 of CPC order for payment of interest is the discretion of the court. Hence, awarding interest @ 9% p.a on the outstanding bill amount would be justified. Herein, I would like to quote ratio cited in the case of **CENTRAL BANK OF INDIA V/s. RAVINDRA (2002) 1 SCC 367** wherein it was held that -

"Section 34 is general procedural provision. Its applicability or inapplicability or extend of applicability would depend on the facts and situation of each case."

7] Conclusion:

7.1] On considering the totality of the narration, I conclude my discussion summarizing my finding that the plaintiff is entitled to claim sum of Rs.3,93,225/- along with interest at the rate of 9% p.a. from the date of filing of this suit till its realization. The amount deposited by the defendants vide Exb.24 shall be adjusted in the decreetal amount.

7.2] Hence, I answer issue no.1 to 3 partly in affirmation and in response to issue no.4, I pass the following order -

-::O R D E R::-

- The present suit of plaintiff is partly decreed.
- Defendants are directed to pay sum of Rs. 3,93,225/- (Rupees Three Lakh Ninety Three Thousand Two Hundred Twenty Five only) alongwith 9% interest from the date of filing of the suit till its realization.
- Defendants had deposited Rs.1,18,000/- (Rupees One Lakh Eighteen Thousand only) at Exb.24 in compliance with the order below leave to defend application at Exb.17. The plaintiff shall withdraw the said amount and the decreetal

amount shall be modified after removing
Rs.1,18,000/- accordingly.

- Parties to bear their own costs.
- Decree be drawn accordingly.

Signed and Pronounced in the open court on 3rd day of
September, 2024.

Date : 03-09-2024

Place : Ahmedabad

(Mrs.Namrata P. Unadkat)
Judge,
Small Cause Court No.3,
Ahmedabad
(UID Code No.GJ01058)

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