KABC170111462020

IN THE COURT OF LXXXV ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-86) (COMMERCIAL COURT), BENGALURU

DATED THIS THE 23RD DAY OF JANUARY 2023

Present: Smt. LATHAKUMARI , M.A., LL.M.
LXXXV Addl. City Civil and Sessions Judge,
(CCH-86 Commercial Court) Bengaluru.

Com.O.S.No.5921/2018

Plaintiff	M/S GO GO INTERNATIONAL PVT. LTD, A Private Company registered under the Companies Act 1956, having registered Office at # 5/6, KHB Industrial Area, 2nd Cross, Yelahanka, Bangalore – 560 064 Karnataka and also having factory and its Corporate Office at # 5/6, KHB Industrial Estate, Yelahanka, Bangalore and Hassan, Represented by its S.P.A. Holder SRI. ANURAG SRIVASTAVA S/o Sri. Awadhesh, Aged about 31 years, Working as Company Secretary **(By Sri. H.T. Nataraj, Advocate)**

Vs

Defendants	01. M/s. CENTARUS LIFESTYLE BRANDS PRIVATE LIMITED, A Private Limited Company registered under the

	Companies act 1956, Registered office at #3347/A, 3rd Floor, 13th Main,HAL 2nd Stage, Bangalore – 560008 Represented by its Director Sri. Thandand Than Krishnadas. 02. Sri. ThandandThanKrishnadas Director, M/s. Centaurus Life Style Brands Private Limited, House No.26, Aishwarya, 1st and 2nd Cross, Dommalur, 2nd Stage, Bangalore – 560071. 03. Sri. Thundiparambil Joseph @ Francisjoseph, Director, M/s. Centaurus Life Style Brands Private Limited, House No.4, No.24, Venkateshwar Layout, Jayanthi Nagar, Horamavu, Bangalore – 560043. 04. Sri. Robin UthappaAiyuda Director, M/s. Centaurus Life Style Brands Private Limited, # 1403, Anriya Palatial, No.8, 2nd Main, RMV 2nd Stage, Bangalore – 560066. 05. Sri. AnandRamachandran Director, M/s. Centaurus Life Style Brands Private Limited, # 145, D, Block, Ground Floor, Prestige Plams, Whitefield, Bangalore – 560066. 06. Sri. MarsettyVenkataramaiahSrinivasa Director, M/s. Centaurus Life Style Brands Private Limited, # 55, 6th Cross, 3rd Main, Near Police Station, Wilson Garden, Bangalore – 560027. 07. Sri. ShravanGujjar Director, M/s. Centaurus Life Style Brands Private Limited, # B-304, Salapuria Silver

	Wood, Behind Big Bazar, Off to Old Madras Road, Bangalore – 560093. 08. Sri. Charmaine Margaret Rozario Director, M/s. Centaurus Life Style Brands Private Limited, # 26, Ishwarya, 1st Cross, 2nd Main, 2nd Stage, Domlur, 2nd Phase, Bangalore – 560071. 09. Sri. Suresh Venkatappa Director, M/s. Centaurus Life Style Brands Private Limited, No.12, SaiKirana, 19th Cross, Akshaya Nagar, Bangalore – 560016. 10. Sri. Rajesh KumarRai Director, M/s. Centaurus Life Style Brands Private Limited, # K-258, TyagiVihar, Shardha Nagar Lucknow – 226002, Uttar Pradesh. **(By Sri. Ranganath M, Advocate for D1, D6, D7, Sri. A Vijikumar for D2, Sri. Srinivasan S for D4, D3, D5, D8, D9 & D10 Ex-parte)**

Date of Institution of the suit	13.08.2018
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Suit for recovery of money
Date of commencement of recording of evidence	14.11.2022
Date on which judgment was pronounced	23.01.2023

Total Duration	Year/s 04	Month/s 05	Day/s 10

(LATHAKUMARI M.),
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.

JUDGMENT

This is a plaintiff's suit to pass judgment and decree in their favour and against the defendants company directing the defendants to pay a sum of Rs.7,48,491/- along with interest at the rate of 18% p.a., on the principle amount of Rs.5,47,298/- from the date of suit till realization of the amount with cost and such other charges of the suit as this court deems fit to grant in the interest of justice and equity.

2. The brief facts of the plaintiff's case is that, the plaintiff is registered company registered under the Companies Act carrying on the garment business in the name and style of M/s. Go Go International Pvt., Ltd., having its registered office at Bengaluru and branch offices at various places including Mumbai and 1st defendant being a company has been carrying on the business under the name and style of M/s. Centaurus

Lifestyle Brands Private Limited in various parts of India including Bengaluru. It is further asserted that 1st defendant company being a private limited company consist of 9 Directors i.e., the defendants 2 to 10 are responsible, incharge and all these Directors are continued their day to day affairs of business transaction of 1st defendant company and 1st defendant company business are well within the knowledge of these defendants. It is further mentioned in para-4 of the plaint that defendants have placed orders for the purchase of the Seam soft panty and bikini on credit basis from plaintiff company. Plaintiff company supplied the desired garments to the defendant company from time to time. Plaintiff has mentioned sales and payments in respect of 8 invoices during 13.05.2017 to 27.09.2017 amounts to Rs.44,30,427/-. Against these payments plaintiff has mentioned that he has received Rs.26,05,777/- and thereby outstanding balance is shown as Rs.18,24,650/-. It is further mentioned that all the defendants have agreed to discharge the said outstanding amount and issued six cheques requested to present the same. At para-6 of the plaint, plaintiff has mentioned details of said six cheques bearing No. 025306, 025307, 025308, 025309, 025304, 025305 for various amounts and for the total amount of

Rs.17,54,276/-. It is further mentioned that as per the advise and instructions of the defendant, the plaintiff company has presented the cheques for encashment through their bank viz., Union Bank of India, Yelahanka Branch, Bangalore whereas the said cheques are unpaid as 'funds insufficient' as per endorsement dated 23.03.2018. It is further contended that aforesaid cheques were issued by defendants No.1 to 10 towards the balance outstanding amount payable to the plaintiff bank and out of the said cheques, legal action was taken only on four cheques i.e., serial No.1 to 4 and since in respect of two other cheques due, efflux of time plaintiff could not take action u/s 138 of N.I. Act. Immediately after dishonour of the said cheques, the plaintiff company issued legal notice dated 19.04.2018 through RPAD demanding the payment of amount covered under the said cheques. Same was duly served on 1st defendant on 20.04.2018. Against the said notice 1st defendant has sent a reply notice dated 23.04.2018 admitting the liability and requested time to make payment and notice sent to defendant to return as 'left the address', defendant No.3 returned as 'Door locked intimation delivered' and defendant No.4 as 'addressee not in station', defendant No.5 has 'left'. Said notice was duly served on defendant No.6 and 7 and on defendant No.8 and 9 was also returned as ‘left’ and 10th defendant ‘refused’ on 27.04.2018. In para-9 of the plaint, plaintiff has mentioned that he has filed a case under Sec. 138 of Negotiable Instruments Act against the defendants for dishonour of four cheques amounting to a sum of Rs.12,77,352/- in CC No. 2333/2018 and after issuance of summons defendants appeared in the court and pleaded guilty and thereafter paid a sum of Rs.12,77,352/- but defendants have not paid the balance amount of Rs.5,47,298/- as claimed in the legal notice. It is further asserted that the defendants have issued cheques for entire amount of Rs.18,24,650/-. Since the defendants have promised to pay the entire outstanding amount to the plaintiff, he did not pursue in filing case against the defendants towards their entire due amount. However, defendants have settled only the four cheques amount and did not pay the balance amount along with interest. Total outstanding amount due from defendants was Rs.8,24,650/- after deducting Rs.12,77,352/- paid by defendants, balance amount due is Rs.5,47,298/- interest at 18% p.a., calculated on the same amounts to Rs.2,01,193/-. Thereby defendants are still due of sum of Rs.7,48,491/- along with future interest at the rate of 18% p.a., on the principle amount of Rs.5,47,298/- from the date of suit till realization of the amount. In para-10 of the plaint, it is further mentioned that the cause of action for filing the above suit arose when the plaintiff company have supplied the ready-made garments to the defendant No.1 company on behalf of other directors under various invoices mentioned supra between 31.05.2017 to 27.09.2017 and when the defendants have failed to pay the outstanding amount, further on issuance of the cheques covering the outstanding amount covered under the cheques and when the cheques were presented and dishonoured and on subsequent dates also when defendants have settled sum of Rs.12,77,352/- but failed to pay the entire outstanding amount. Hence, this suit for the reliefs mentioned supra.

3. On issuance of suit summons, the defendants No.1, 6 and 7 though appeared through their counsel but failed to file their written statement. Defendants 3, 5, 8, 9, 10 remained absent. Accordingly, placed ex-parte. Defendants No.2 and 4 appeared through their counsel and resisted the suit filed by the plaintiff by filing their written statement individually.

4. 2nd Defendant filed his written statement denying the plaint averments contending that Rs.12,77,352/-

was paid through cheque bearing No. 017014 and there is no balance payment whatsoever as claimed by the plaintiff. Hence, pray for dismissing the suit with exemplary costs.

5. 4th defendant filed his written statement contending that suit filed by plaintiff is devoid of merits and not at all maintainable. It is further mentioned that plaintiff has suppressed several material facts and documents with an intention to mislead this court for the purpose of obtaining favourable order. It is further mentioned that 4th defendant is a reputed Indian Cricketer and also a businessman and one of the Director of the 1st defendant company there exist no previty of contract between the plaintiff and the 4th defendant and on reading of the plaint establishes that there is no specific contention or averments against this defendant. 4th defendant being one of the Director cannot be held liable personally for the affairs of 1st defendant company and hence pray for dismissal of this suit with cost against him in the interest of justice and equity.

6. Based on the above pleadings, this court framed the following issues: -

1) Whether the plaintiff proves that defendants are liable to pay a sum of Rs.7,48,491/- along with future interest @ 18% per annum on the principle amount of Rs.5,47,298/- from the date of suit till realization of the amount with cost?

2) Whether the plaintiff further proves that defendants 2 to 10 being directors of 1st defendant private limited company are responsible and having knowledge of the business being carried by the 1st defendant company?

3) What order or decree?

7. On behalf of plaintiff company, its Power of Attorney holder and also Admin employee of plaintiff got examined himself as PW.1 and got marked as many as 19 documents Ex.P1 to P19. On behalf of defendants 2nd defendant got examined himself as DW.1 stating that he is the Managing Director of the 1st defendant company and got marked three documents Ex.D1 to D3.

8. I have carefully examined the entire records placed before me. Heard arguments.

9. My findings on the above issues are -

Issue No.1: - In the Negative

Issue No.2: - In the Affirmative

Issue No.3: - As per final order
for the following reasons.

REASONS

10. Issue No.1:- As per the plaint averments and also chief affidavit filed before this court by way of examination-in-chief on oath by PW.1, it is the specific case of Plaintiff company that, they have supplied the desired garments to the 1st defendant company from time to time as per the details of the invoice bearing No. 0004 dated 31.05.2017 for Rs.3,22,830/-, 0005 dated 02.06.2017 for Rs.1,61,415/-, 0012 dated 07.07.2017 for Rs.5,19,435/-, 0014 dated 07.07.2017 for Rs.9,63,900/-, 00089 dated 03.08.2017 Rs.707,486/-, 00202 dated 16.09.2017 for Rs.477,418/-, 00242 dated 27.09.017 for Rs.12,71,303/-, and 00243 dated 27.09.2017 for Rs.6,640/- in all amounting to Rs.44,30,427/-. Against these payments plaintiff himself has mentioned at para-4 column No.4 that he has received Rs.3,22,830/- towards invoice No. 0004 plaintiff has not produced this invoice dated 31.05.2017 for Rs.3,22,830/- before this court. Further, according to the plaintiff on 02.06.2017 he has sent garments worth Rs.1,61,415/- under invoice bearing No. 0005. Whereas plaintiff has not produced even the invoice bearing No.

0005. Hence, plaintiff not produced the invoice mentioned at Sl. No.1 and 2 in para-4 of his plaint. With regard to remaining six invoices mentioned at Sl. No.3 to 8, plaintiff has not produced invoice bearing No. 0012 and 0014 dated 07.07.2017 for Rs.5,19,435/- and Rs.9,63,900/- respectively. Against these invoices amount, plaintiff mentioned at column No.4, the amount received as Rs.14,83,555/-, whereas plaintiff has not at all produced first four invoices to substantiate either supply of material or receipt of amount. The invoices which are produced and exhibited before this court are invoice bearing No. 0023 for Rs.6,640/- i.e., invoice mentioned at Sl. No.8 as per Ex.P5. Invoice bearing No. 00089 dated 03.08.2017 for Rs.7,07,486/- which is as per Ex.P6 which is at Sl. No.5, Invoice bearing No. 00202 dated 16.09.2017 for Rs.4,77,418/- as per Ex.P3. Invoice bearing No. 00242 for Rs.12,71,303/- is at Ex.P8. Hence, the invoice produced under Ex.P5 to P8 are all in respect of invoice mentioned at Sl. No.5 to 8. At Ex.P13 plaintiff again got marked the very same invoice bearing No. 00089 which is similar to that of Ex.P6. Hence, Ex.P6 and P13 are one and the same document. Further, Ex.P14 is in respect of invoice bearing No.202 which is similar to that of Ex.P7. Hence, Ex.P7 and P14 are one and the same document. Further, Ex.P15 is in respect of 00242 which is as per Ex.P8. Ex.P8 and P15 are one and the same document. Further, Ex.P16 is in respect of 00243 which is as per Ex.P5 and P16. Hence, Ex.P5 and P16 are one and the same document. Though plaintiff mentioned as many as 8 invoices claiming amount of Rs.44,30,427/-. Plaintiff has produced only four invoices and failed to produce remaining 4 invoices before this court. Further, the plaintiff has not produced his ledger extract before this court to substantiate date of receipt of amount and mode of payment mentioned in column No.4 of the plaint. However, according to version of plaintiff against supply of garments for Rs.44,30,427/- defendant has paid Rs.26,05,777/-. It is plaintiff's further case that against this outstanding amount of Rs.18,24,650/-, after due satisfaction of the goods supplied by the plaintiff company to the 1st defendant company, all the defendants have agreed to discharge the aforesaid outstanding amount i.e., Rs.18,24,650/- shown in the invoice and on behalf of 1st defendant, defendants No.2 to 10 agreed to make payment and accordingly issued 6 cheques and requested the plaintiff to present the same. Hence, according to oral testimony of PW.1 and also plaint averments, plaintiff contended that towards amount due of Rs.18,24,650/-

defendants have issued six cheques. Whereas in para-6 of the plaint, so also in chief affidavit, plaintiff has mentioned the total amount in pursuance of said six cheques as Rs.17,54,276/-. Nowhere in the plaint, plaintiff has mentioned that against Rs.18,24,,650/- which was an outstanding due, defendant issued six cheques towards part payment of Rs.17,54,276/-. It is not in dispute that in respect of first four cheques mentioned in Sl. No.1 to 4 at para-6 of the chief-affidavit and also plaint, plaintiff has already initiated criminal proceedings against defendants u/s 138 of Negotiable Instruments Act and defendants have paid amount mentioned in the said cheques i.e., Rs.12,77,352/- while settling their matter in criminal proceedings. Under such circumstances, whether amount claimed by the plaintiff under remaining two cheques bearing No. 025304, 025305, dated 16.12.2017 and 20.12.2017 for Rs.2,38,215, Rs.2,38,709/- respectively has been established by the plaintiff is a point to be considered at this stage. As I have already stated in pursuance of this suit plaintiff is claiming an amount of Rs.7,48,491/-. Admittedly plaintiff company is a registered company incorporated under the Companies Act. PW1 stated on oath that as per the advice and instruction of the defendants, plaintiff company has presented the cheques for encashment through their bankers namely Union Bank of India, Yelahanka Branch, Bengaluru and said aforesaid cheques i.e., 6 cheques mentioned in para 6 of the plaint and also affidavit returned as 'funds insufficient' as per the bank endorsement dated 23.03.2018. Further in para 8 of the plaint and also chief affidavit it is specifically mentioned that defendants No.1 to 10 issued said cheques towards the balance outstanding amount payable to the plaintiff company and legal action was taken only on 4 cheques i.e., Sl. No.1 to 4 and with regard to other 2 cheques i.e., cheques in question due to efflux of time, plaintiff could not take action u/S 138 of NI Act. It is also mentioned that immediately after the dishonor of cheques, the plaintiff company has also caused a legal notice dated 19.04.2018 demanding the payment of amount covered under the aforesaid cheques. With these version of plaintiff now let me consider the demand notice issued by plaintiff on 19.04.2018 which is as per Ex.P.17. In this demand notice at para 3 it is mentioned that on behalf of the 1st of you, i.e., 1st defendant company all other defendants have agreed to make payments and accordingly issued the cheques in favour of plaintiff towards part payment. In this demand notice it is further mentioned that as per the instructions of defendants when plaintiff presented cheques bearing No.025306, 025307, 025308, 025309 for total sum of Rs.12,77,352/- through their bank Union Bank of India for encashment on 22.03.2018 same were returned unpaid. No where in this demand notice plaintiff has stated that he presented all the 6 cheques issued by defendants through his banker Union Bank of India and same were returned unpaid. In this notice plaintiff only speaks about 4 cheques mentioned supra for Rs.12,77,352/-. When such being the case the contention taken by plaintiff in this suit that he presented all the 6 cheques through his banker Union Bank of India holds no water. Further plaintiff himself has produced the remaining 2 original cheques before this court which are as per Ex.P.3 and P.4. Ex.P.3(a) and P.4(a) are the endorsement issued by IDBI Bank Limited on 01.01.2018 and not by Union Bank of India on 23.03.2018. No doubt with regard to other 4 cheques plaintiff has produced endorsement issued by Union Bank of India on 23.03.2018 which are as per Ex.P.9 to P.12. Whereas the version of plaintiff that he also presented the 2 cheques relied upon in this suit as per Ex.P.3 and P.4 were neither presented along with said 4 cheques Ex.P.9 to P.12 nor through Union Bank of

India nor received the endorsement on 23.03.2018. The version of plaintiff in this regard is not only contrary to the plaint averments and also affidavit averments mentioned at para-6 but also contrary to documentary evidence Ex.P.3a and P.4a. Under such circumstances the contention taken by plaintiff that defendants issued 6 cheques towards outstanding balance due appears vague and baseless. At one breath plaintiff deposes that 6 cheques were issued towards outstanding balance amount. Whereas outstanding balance is shown as Rs.18,24,650/- in the plaint and also chief affidavit and the cheque amount of all the 6 cheques amounts to Rs.17,54,276/-. Hence the sales and payments mentioned in para 4 of the plaint and chief affidavit and the documents at para 6 are contrary to each other. Plaintiff has not produced invoices mentioned at Sl.No.1 to 4. The amount claimed by the plaintiff includes even the amount mentioned in these 4 invoice. If plaintiff has received amounts referred in the invoice Sl.No.1 and 2, what made the plaintiff to mention those 2 invoices even in this case has not been explained by the plaintiff. When the cheques in question were actually issued to plaintiff is also not mentioned by the plaintiff. The contention that said cheques i.e., Ex.P3 and P4 were issued at the time of issuance of Ex.P9 to P12 has not been established by the plaintiff. Further plaintiff being a registered company it is probable that plaintiff maintains ledger extract. Whereas plaintiff has not produced the same. Further plaintiff while issuing the demand notice as per Ex.P.17 only mentioned 4 cheques in para 5 of his demand notice. The contention taken by the plaintiff in the plaint and demand notice are not only contradictory but also establishes that plaintiff not approached this court with clean hand. Further non production of invoice mentioned at Sl.No.1 to 3 at para 4 of the plaint and chief affidavit of PW1 so also ledger account requires an adverse inference to be drawn against plaintiff. In the cross examination of PW1, PW1 deposes on oath that yagappan@gogoindia.com is email id of plaintiff. Defendant has produced one document as per Ex.D.1 stating that plaintiff has send email to DW1 as per Ex.D.1 on 20.03.2018 with attachment. In said Ex.D.1 the subject is mentioned as Centaurus and Berry Payment receipt and outstanding list. The Centaurus referred in this Ex.D.1 is in respect of 1st defendant company. It is further mentioned in this email as "find the attached payments outstanding of Centaurus and Berry as on today. Centaurus Rs.18,24,650/-". No doubt the very same outstanding amount i.e., Rs.18,24,650/- is forthcoming in the plaint averments at para 4 and 5 so also in the affidavit. Even according to plaintiff the outstanding amount is mentioned as Rs.44,30,427/- and amount paid is shown as Rs.26,05,777/-. In the attachment dated 20.03.2018 attached with said mail Ex.D.1 there is column shown as “break up for inward received”. In this column the amount of receipt of Rs.26,05,777/- is mentioned in detail on various dates. On 11.12.2017 towards invoice number 0014 and 0089 Rs.5,00,000/- is paid and in the remarks column it is mentioned as cash received. This amount of Rs.5,00,000/- dated 07.12.2017 is forthcoming in the ledger extract of defendant which is as per Ex.D.3. Further it is the contention of defendant that apart from cash payment of Rs.5,00,000/- paid on 11.12.2017 he has paid another Rs.5,00,000/- by way of cash to plaintiff on 31.01.2018. Whereas plaintiff neither disclosed this mail in his plaint nor produced ledger account maintained by him in which the details of sales and payments with breakup for inward received will be mentioned. Between 11.09.2017 to 24.11.2017 plaintiff has received 7 payments through cheque. Again on 26.10.2017 and 31.10.2017 2 more amounts were received through RTGS. Further on 14.11.2017 another 2 amounts received through cheque and again on 09.11.2017 Rs.2,00,000/- was received through RTGS and Rs.5,00,000/- by cash on 11.12.2017. In the column sales and payment received at para 4 of the plaint, plaintiff has not at all mentioned the date of receipt of payments and also mode of payment made by defendant. It is not the case of plaintiff that on the date of invoice itself i.e., dates forthcoming in column 2 of the said sales and payments, received payments. It is the case of plaintiff that defendants always made the payment belatedly. When such being the case, what prevented the plaintiff to mention the details of dates and also mode of payment with regard to receipt of Rs.26,05,777/- is again not explained by the plaintiff. It is not the case of plaintiff that, he is not maintaining any account. In para 5 of the chief affidavit, plaintiff specifically mentioned that he has maintained account with regard to garments supplied to 1st defendant company. As per the ledger account maintained by the defendants against amount due of Rs.63,75,408.60 defendants have paid Rs.64,20,469/- i.e., an excess amount of Rs.45060.40 has been paid to plaintiff. Plaintiff by not producing the account maintained by its company is only taking advantage of cheques available with him and making this claim against defendants.

Plaintiff is denying receipt of Rs.5,00,000/- by way of cash on 11.12.2017 from defendant. Whereas plaintiff's mail dated 20.03.2018 with attachment of details of payment receipts and outstanding list available at Ex.D.1, establishes that plaintiff is making false claim against defendants. DW.1 categorically deposed in his cross-examination that in the document of plaintiff i.e., Ex.D1 receipt of amount of Rs.5,00,000/- is forthcoming. Further, as on the date of issuance of demand notice Ex.P.17 plaintiff was very much aware of Ex.P.3a and P4a dated 01.01.2018. If defendants were actually due of amounts even in respect of those 2 cheques it is probable that he would have mentioned the same even in the demand notice Ex.P.17. Withholding of accounts maintained by the plaintiff pertaining to receipt of payments by defendants towards material supplied to him establishes that plaintiff not approached this court with clean hand and making false claim against defendants knowing fully well that defendants have cleared not only the entire amount due but also more than the amount due to the plaintiff. The amount mentioned in Ex.D3, the ledger account of Defendant is in accordance with the break up for inward received mentioned at attachment with Ex.D1 which is a mail issued by plaintiff on 20.03.2018 are one and the same and tallying with date and payments. This Ex.D1 of plaintiff produced by defendant along with defendants ledger account Ex.D3 establishes that plaintiff not at all approached this court with clean hands. Above all, the plaint averments and the documents discussed supra establishes that plaintiff's version are not only contradictory but also establishes that plaintiff is making false claim. Parties shall approach the court not only with clean hand but also with clean brain and heart. The version of plaintiff and the documents relied upon by the plaintiff establishes that plaintiff neither approached this court with clean hands nor established its claim against defendants and that apart the claim made by the plaintiff against defendants itself is false and not sustainable under law. Such attitude on the part of plaintiff requires to be curbed by imposing the cost of litigation incurred by defendants on the plaintiff. The above discussion establishes that this is a frivolous litigation made by plaintiff by concealing the receipt of payments made by defendants. Plaintiff fails to establish his liability against defendants for a sum of Rs.5,47,298/-. Under such circumstances, question of recovering the same along with interest at the rate of 18% p.a., and future interest does not arise.

Accordingly, I have answered Issue No.1 in the Negative

11. **<u>Issue No.2</u>**: - Defendants more particularly the 2nd and 4th defendants who have filed their written statement before this court admits that they are Directors of 1st defendant company. Further, DW.1 deposed before this court that other defendants are Directors of 1st defendant company and he is taking care of the affairs of the company as a Managing Director. Since, plaintiff failed to establish its claim against defendants question of considering this issue does not arise. However, the materials on record and also oral testimony of PW.1 and DW.1 establishes that defendants 2 to 10 being Directors of 1st defendant company were having knowledge about the business of 1st defendant company. Accordingly, I have answered this issue in the Affirmative.

12. <u>Issue No.3</u>: - The courts of law are meant for imparting justice between the parties. One, who comes to the court, must come with clean hands. The truth should be the guiding star in the entire judicial process. Every trial is a voyage of discovery in which truth is the quest. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity in their pleadings. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the Court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. A plaint or an affidavit containing a misleading and/or an inaccurate statement or in which material facts are suppressed, only to achieve an ulterior purpose, amounts to an abuse of process of this court. “A person who seeks equity must come with clean hands. He, who comes to the Court with false claims or who suppresses material facts, cannot plead equity nor would the court be justified to exercise jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in a case based on false claims or when relief is sought to be obtained by practicing fraud. No sympathy and equitable consideration can come to the rescue of such plaintiff. In view of my discussion, while considering Issue No.1, I am of the considered opinion that the plaintiff did not approach the Court with disclosure of true facts. Thus, the plaintiff has not approached the court with clean hands. Hence, he is not entitled to the relief sought for. Further, plaintiff knowing fully well that he is not due of any amount from defendants instituted above suit against defendants and made them to litigate before this court since 2018 by engaging lawyer and also by spending their quality time. Hence, plaintiff company is liable to bear not only the legal expenses of defendants but also miscellaneous cost incurred by defendants while prosecuting the matter. Hence, this court opines that plaintiff's suit required to be dismissed with exemplary cost of Rs.50,000/-. In these circumstances and in view of my findings on Issue No.1 and 2, I proceed to pass the following:

ORDER

The Suit filed by the plaintiff against defendants for recovery of Rs.7,48,491/- along with interest at 18% p.a., on the principle amount of Rs.5,47,298/- from the date of suit till realization of the amount is dismissed on cost of Rs.50,000/-.

Further, on deposit of cost of Rs.50,000/- same shall be paid to DW.1

the Managing Director of 1st defendant company.

Draw decree accordingly.

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in open Court on this the **23rd day of January, 2023**).

(LATHAKUMARI M.),
LXXXV Addl. City Civil & Sessions Judge,
Bengaluru.

A N N E X U R E
LIST OF WITNESSES *EXAMINED ON BEHALF OF PLAINTIFF:*

PW.1 Krishnappa H

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFF

Ex.P.1	Original special power of attorney along with board resolution dated 02.04.2018.
Ex.P.2	Original GPA executed by plaintiff in my favour.
Ex.P.3	Original cheque dated 16.12.2017 for Rs.2,38,215/- issued by authorized signatory of defendant.
Ex.P.3a	Bank endorsement for return of said cheque Ex.P.3 as funds insufficient.
Ex.P.4	Original cheque dated 20.12.2017 for Rs.2,38,709/- issued by authorized signatory of defendant.
Ex.P.4a	Bank endorsement for return of said cheque

	Ex.P.4 as funds insufficient.
Ex.P.5 to 8	4 invoices.
Ex.P.9 to 12	Certified copy of cheques along with bank endorsement.
Ex.P.13 to 16	Certified copy of 4 invoices.
Ex.P.17	Certified copy of legal notice dated 19.04.2018 issued to 1st defendant and their directors.
Ex.P.18	Certified copy of the reply notice issued by 1st defendant company through its counsel in 23.04.2018.
Ex.P.19	Certified copy of judgment passed in CC 2333/2018 filed by plaintiff herein against 1st respondent and its directors.

LIST OF WITNESSES *EXAMINED ON BEHALF OF THE* DEFENDANTS

DW.1 T.H. Krishna Das

LIST OF DOCUMENTS *EXHIBITED ON BEHALF OF THE* DEFENDANTS

Ex.D.1 E-mail sent by plaintiff dated 20.03.2018 along with plaintiff's accounts statement.

Ex.D.2 Certificate u/S 65B of Indian Evidence Act.

Ex.D.3 Ledger statement maintained by defendant.

(LATHAKUMARI M.),
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.