

**IN THE COURT OF LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU. (CCH-90)**

Present: Sri.S.J.Krishna, B.Sc., LL.B.,
LXXXIX Addl.City Civil &
Sessions Judge, Bengaluru.

Dated: 14th July 2021

Com.O.S.No.1295/2018

PLAINTIFF : Prerana Constructions,
Registered office at Ekadantha,
No.46, 35/1, Old Bank Colony,
Off Kanakapura Road,
Near Maple Bear Canandian School,
Konanakunte, Bengaluru-560 062.

Represented by:
Sri.N.Rajesh Prabhu,
Proprietor,
Aged about 46 years,
S/o late N.Sadanand Prabhu,
R/at Ekadantha, No.46, 35/1,
Old Bank Colony,
Off Kanakapura Road,
Near Maple Bear Canandian School,
Konanakunte, Bengaluru-560 062.

(By Sri.P.P.Hegde, Advocate)

-Vs-

DEFENDANT : Robbins Tunneling and Trenchless,
Technology (India) Pvt., Ltd., Suite No.8,
3rd Floor,
Yeshwanth Place, Chanakyapuri,
New Delhi-110 021.Represented by

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Mr.Kapil Bhati,Managing Director,
Suite No.8, 3rd Floor,
Yeshwanth Place, Chanakyapuri,New
Delhi-110 021.

(By Sri.Naresh.C.Sharma, Advocate)

Date of Institution of suit	:	16.02.2018		
Nature of suit (suit on pronote, suit for declaration and possession suit for injunction, etc.,)	:	Recovery of money		
Date of commencement of recording of evidence	:	19.10.2019		
Date of judgment	:	14.07.2021		
Total duration	:	Year/s	Month/s	Day/s
		3	4	28

(S.J.KRISHNA)
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(CCH-90)

J U D G M E N T

The plaintiff has filed this suit for recovery of ₹.11,61,906/- together with interest @ 18% p.a. from the date of suit till the date of realisation against defendant.

The summary of the case of the plaintiff is as follows:

2. In the regular course of business the defendant has placed orders for the purchase of materials for waterproofing, construction chemicals namely Sika Injection 101H, Sika Injection 201CE from the plaintiff on various dates from 15.06.2016 to 12.12.2016 and the plaintiff had supplied the materials by delivering the same at the defendant's site at Bengaluru Metro Rail Corporation Ltd., Bengaluru on various dates in pursuance of purchase order as under:

1. 13.06.2016, PO No.RI-B-1606131
2. 08.07.2016 PO No.RI-B-1607081
3. 02.08.2016, PO No.RI-B-1608021
4. 09.08.2016, PO No.RI-B-1608092
5. 19.08.2016, PO No.RI-B-1608194

- 6. 25.08.2016 PO No.RI-B-1608252
- 7. 30.08.2016, PO No.RI-B-1608304
- 8. 22.09.2016, PO No.RI-B-1609221
- 9. 21.11.2016, PO No.RI-B-1611212

3. The defendant was liable to pay ₹.11,61,906/- as on 17.01.2018. The defendant has acknowledged the said liability on 13.09.2017 and also in its e-mails. In spite of repeated requests, demands through e-mails and phone calls the defendant has failed to make payment.

4. The plaintiff got issued a legal notice dated 17.01.2018 calling upon the defendant to pay ₹.11,61,906/- along with interest @ 18% p.a. The defendant has sent an untenable reply and has not complied with notice demand. Hence the plaintiff has filed the suit.

5. After the service of summons the defendant entered its appearance through an advocate and has filed the written statement.

The case of the defendant is as follows:

6. The suit is not maintainable either in law or on the facts of the case. The plaintiff has no cause of action to file the suit and the plaint does not disclose any cause of action, hence the plaint is liable to be rejected. The plaintiff has not properly filed the suit as the proprietorship firm is not a legal entity and the suit cannot be filed in the name of the firm as per law. The averments made in the plaint are all false and concocted.

7. The defendant has regularly made the payments to the plaintiff as per agreed terms. The plaintiff had supplied SIKa make chemical injections to the defendant at Bengaluru Metro Project site. The defendant had worked for M/S.Coastal Projects Ltd., and the said company has failed to make the payments to the defendant and declared itself as insolvent and started legal proceedings in this regard. The defendant has regularly made the payments to the plaintiff, despite the facts that a huge amounts of defendant is still outstanding against Coastal Projects Ltd., who initiated insolvency proceedings. The defendant had already paid huge

amount to the plaintiff and as per their account no amount whatsoever is payable by the plaintiff to the defendant. The plaintiff has given false and wrong statement regarding materials supplied. Hence the dispute arose between the parties. Even some of the materials supplied by the plaintiff was of inferior quality and of no use for the defendant. The plaintiff had failed to replace the said materials despite various requests made by the defendant. No amount or the suit claim of the plaintiff is pending or due against the defendant on any account.

8. The defendant requested the plaintiff to reconcile the records regarding the supply of the materials or the amount paid. The material was not supplied as per the order placed upon by the plaintiff and even some of the materials was of inferior quality and the plaintiff failed to replace the same despite repeated requests by the defendant. The defendant denied that he was liable to pay ₹.11,61,906/- as on 13.01.2018 and alleged acknowledgment of debt on 13.09.2017. The defendant has suitably replied the legal notice issued by the plaintiff. The suit is liable to be dismissed with exemplary cost.

9. Based on the rival pleadings, the following issues were framed:

1.	Whether plaintiff proves that he is entitled for decree for ₹.11,61,906/- (Rupees Eleven lakhs sixty one thousand nine hundred and six only) as averred in the plaint?
2.	Whether plaintiff proves that he is entitled for 18% p.a. interest on the amount claimed in the plaint?
3.	Whether the plaintiff is entitled for the relief sought for?
4.	What order or decree?

10. Sri.Rajesh Prabhu adduced his evidence as PW.1. He has exhibited Ex.P.1 to 28. The defendant has failed to cross-examine the PW.1. The defendant has not adduced any evidence. After the conclusion of the trial, I have heard the arguments addressed by the learned advocate for the plaintiff. The defendant did not address any arguments.

11. I have carefully gone through the materials available on record.

12. My findings on the above issues are as follows:

Issue No.1, 2 & 3 : in the Affirmative.
Issue No.4 : as per the final order
for the following

REASONS

Issue No.1, 2 & 3: These three issues are taken together for discussion as the same are interconnected with each other and with an intention to avoid repetition of facts and discussion.

13. The plaintiff has filed this suit for recovery of ₹.11,61,906/- together with interest @ 18% per annum from the date of suit till the date of realisation against defendant.

14. PW.1 Sri.Rajesh Prabhu has reiterated the plaint averments in his affidavit evidence. He has exhibited Ex.P.1 to 28 as under:

Exhibit No.	Description of the document
P.1 to 20	Invoices
P.21	Copy of Ledger

P.22	Office copy of the legal notice dated 17.01.2018
P.23	Downloaded copy of e-mail conversation page No.1 to 15
P.24	Downloaded copy of e-mail conversation page No.16 and 17
P.25	Downloaded copy of shop and establishment registration certificate
P.26	Downloaded copy of GST certificate
P.27	Downloaded copy of Udyog Aadhar Memorandum
P.28	Certificate u/sec.65(B)(4) of Indian Evidence Act

15. The defendant has not examined PW.1 and has not adduced any evidence.

16. The materials available on record show that PW.1 Sri.N.Rajesh Prabhu is the proprietor of plaintiff concern M/s.Prerana Constructions, water proofing specialist and painting contractors. The defendant was engaged in Metro Project at Bengaluru. It is the case of the plaintiff that the plaintiff has supplied materials for water proofing constructions namely SIKA Injection 101H & SIKA Injection 201CE to the defendant on various dates from 15.06.2016 to 12.12.2016 which is evidenced by invoices I.e, Ex.P.1 to

Ex.P.20. As per Ex.P.21 the defendant was due in a sum of ₹.14,11,905.79 as on 05.05.2017 which is rounded off to ₹.14,11,906/-. The Ex.P.23 are the copies of e-mail correspondence between the plaintiff and the defendant. Which shows that after several demands the defendant has paid a sum of ₹.2,50,000/- on 08.11.2017. The plaintiff got issued a legal notice dated 17.01.2018 as per Ex.P.22 calling upon the defendant to pay balance amount of ₹.11,61,906/- together with interest @ 18% p.a. from 12.12.2016. The defendant in his written statement has admitted the business transaction with the plaintiff. The defendant is contending that he has paid a huge sum to the plaintiff already. He has stated that he has to receive payments from M/s.Coastal Projects Ltd., and the said company has failed to make payments and declared itself insolvent and started legal proceedings. The defendant has admitted his liability towards the plaintiff but pleaded his inability to pay the same. The defendant by not participating in the proceedings has admitted the claim made by the plaintiff.

17. The plaintiff is claiming interest @ 18% p.a. from the date of suit till the date of realisation. The transaction

between the plaintiff and the defendant is a commercial transaction and the defendant has failed to pay the entire due amount from 05.05.2017 to the plaintiff. In the absence of contract contrary to fix the rate of interest, the claim of plaintiff for interest @ 18% p.a. is acceptable. Hence, the plaintiff is entitled for interest on ₹.11,61,906/- @ 18% p.a. from the date of suit till the date of realisation.

18. The evidence adduced by PW.1 remained unchallenged. The suit filed by the plaintiff is within the period of limitation. There are no grounds to disbelieve the case of the plaintiff. The plaintiff is entitled for suit relief. Accordingly, I answer issue No.1, 2 and 3 in the **Affirmative.**

19. **Issue No.4:** In view of the findings on issue no.1 2 & 3, I pass the following:

ORDER

The suit filed by the plaintiff is hereby decreed with costs.

The defendant is liable to pay ₹.11,61,906/- (Rupees Eleven lakhs Sixty

one thousand nine hundred and six only) to the plaintiff.

The defendant is also liable to pay interest @ 18% p.a. from the date of suit till the date of realisation on ₹.11,61,906/- (Rupees Eleven lakhs Sixty one thousand nine hundred and six only) to the plaintiff .

Draw decree accordingly.

The office is hereby directed to send a copy of the judgment to the plaintiff through email as per Order XX Rule 1 CPC as amended by Section 16 of Commercial Courts Act, 2015.

(Dictated to the Stenographer, corrected, signed and then pronounced by me in the open court on 14th July 2021)

(S.J.KRISHNA)
LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU.
(CCH-90)

ANNEXURES

List of witnesses examined for the plaintiff:

P.W.1 N.Rajesh Prabhu

List of documents exhibited on behalf of the plaintiff:

Exhibit No.	Description of the document	Date of the document
P.1 to 20	Invoices	
P.21	Copy of Ledger	
P.21(a)	Sign of witness	
P.22	Office copy of the legal notice	17.01.2018
P.23	Downloaded copy of e-mail conversation page No.1 to 15	
P.24	Downloaded copy of e-mail conversation page No.16 and 17	
P.25	Downloaded copy of shop and establishment registration certificate	
P.26	Downloaded copy of GST certificate	
P.27	Downloaded copy of Udyog Aadhar Memorandum	

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P.28	Certificate u/sec.65(B)(4) of Indian Evidence Act	
P.28(a)	Sign of witness	

List of witnesses examined for the defendants:

NIL

List of documents marked for the defendants:

NIL

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