

**IN THE COURT OF LXXXV ADDL. CITY CIVIL &
SESSIONS JUDGE, AT BENGALURU (CCH. 86)
(Commercial Court)**

THIS THE 30TH DAY OF MARCH 2021

**PRESENT:
SMT. LATHAKUMARI M.
M.A., LL.M.,
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com. OS. No. 3793/2019

BETWEEN:

M/s JORANGE

A proprietor concern firm,
having its office at: No.108, 2nd Floor,
Maxworth Mansion, Lalbagh Fort
Road, Near Minerva Circle,
Bangalore-560 004 represented by
its Proprietor Mr. K.K. Pandurang

: PLAINTIFF

**(Represented by Sri. N.
Shivakumar - Advocate)**

AND

M/s. KUSHI ENTERPRISES,

A proprietor concern firm,
Having its office at: Vaibhav Complex,
Near Ameer Talkies, S.S. Road,
Vijayapura - 586 101.

Represented by its Proprietor
Mr. Raghavendra Chidri,

Also at:

Mr. Raghavendra Chidri
The Raymonds Shop,
Yelimeli Complex, S.S. Road,
Vijayapura – 586 101.

: DEFENDANT

(Ex-parte)

Date of Institution of the suit	29.05.2019
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	26.03.2021
Date on which judgment was pronounced	30.03.2021
Total Duration	Year/s 01 Month/s 10 Day/s 01

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

J U D G M E N T

This is a plaintiff's suit against the defendant for judgment and decree directing him to pay a sum of Rs.10,00,000/- with interest @ 18% p.a., from the date of suit till realization with cost, litigation expenses from the

defendant and such other reliefs as this court deems fit to grant in the circumstances of the case.

2. The brief facts of the plaintiff's case is that, the plaintiff is a supplier of Merchandiser of Men's Fashion/ Ready made Garments. During July 2015 the defendant being the retailer had approached and requested the plaintiff to supply the materials. After mutual discussion and on agreed terms, as per the defendant's requirement and as per his order from time to time the plaintiff supplied materials after raising their invoices granting 30 days period for the payment. He has supplied under 11 invoices on various dates the garments worth Rs.10,49,502/-. The defendant having accepted the materials failed to clear the payment due. On 18.3.2017 he has paid Rs.49,502/- and thereby he is still due of Rs.10,00,000/-. The plaintiff issued demand notice dated 26.10.2018 calling upon the defendant to pay Rs. Ten lakhs with interest at the rate of 18% and the overdue balance within 15 days from the date of receipt of notice. The said notice returned with postal shara 'addressee refused - returned to sender'. Despite repeated demand and request defendant failed to clear the amount. The cause of action for the suit arose from 12.8.2015 to

19.1.2016 when the materials dispatched from Bengaluru under various invoices as mentioned in para-3 of the plaint to the defendant. On 18.3.2017 when the defendant made payment of Rs.49,000/-, on 26.10.2018 when demand notice was issued to defendant and also on 30.10.2018 when the defendant refused to receive the said notice. Hence, this suit for the reliefs mentioned supra.

3. On issuance of suit summons to defendant, the defendant not claimed the summons and remained absent, accordingly placed ex-parte.

4. The SPA holder of plaintiff got examined himself as PW.1 and got marked as many as 6 documents as Ex.P1 to P6.

5. I have carefully scrutinized the entire records placed before me. Heard the arguments.

6. Now the points that arise for my consideration are:-

- 1) Whether the Plaintiff is entitled to recover a sum of Rs.10,00,000/- along with interest @ 18% p.a., from the date of suit till realization with cost and such other reliefs as prayed?

2) What Order?

7. My answers to the above Points are as under:

Point No.1 :- In the Affirmative

Point No.2 :- As per the final Order
for the following reasons.

REASONS

8. **Point No.1:-** It is the case of plaintiff that he has supplied garments worth Rs.10,49,502/- to the defendant who is a retailer and defendant is still due of Rs. Ten lakhs and said materials were supplied against 11 invoices between August 2015 to January 2016. To establish the same, the plaintiff's SPA holder got examined himself as PW.1. In his chief affidavit by reiterating the plaint averments, PW.1 got marked as many as 6 documents Ex.P1 to P6. Ex.P1 is the 11 invoices under which the plaintiff is claiming Rs. Ten lakhs along with interest @ 18%. Ex.P2 is the 8 lorry receipts for having supplied the materials to the defendant. Ex.P3 is the office copy of demand notice. Ex.P4 and P5 are the vital documents which are returned sealed RPAD covers. On this sealed

cover there is a postal shara 'addressee refused to receive accordingly returned to sender'. This postal shara establishes that the defendant refused to receive the notice. Even the suit summons issued by this court has not been claimed by the defendant. In the absence of specific defence there is no reason to disbelieve the oral and documentary evidence relied upon by the plaintiff. In support of Ex.P1 plaintiff has produced lorry receipts as per Ex.P2. The oral and documentary evidence relied upon by the plaintiff remained unchallenged. It is the contention of plaintiff that defendant has made payment of Rs.49,502/- on 18.3.2017. Accordingly the suit claim made by the plaintiff is well within time. The defendant by refusing the demand notice and also by not claiming suit summons probably admits the claim of the plaintiff. Even otherwise in the absence of specific plea there is no reason to disbelieve the case of plaintiff. In the invoices there is a reference about terms and conditions wherein it is mentioned that for delayed payment interest @ 18% p.a., will be charged. This is a suit for commercial transaction. As per the invoice produced before this court, defendant received the materials and very much aware of the interest charged by plaintiff for delayed payment. Even otherwise there was no difficulty for

defendant to appear before this court and put forth his defence. In the absence of specific defence with regard to interest claimed, there is no reason for this court to reduce the rate of interest. Under such circumstances this court has no other way except to decree the suit as claimed. Accordingly, I answer Point No.1 in the **Affirmative.**

9. Point No.2 : - In view of my findings on Point No.1, I proceed to pass the following Order.

ORDER

The Suit filed by the plaintiff claiming Rs.10,00,000/- along with cost and future interest @ 18% p.a., from the date of suit till realization against the defendant is decreed with costs.

The defendant is directed to deposit the suit claim within two months from today failing which plaintiff is at liberty to recover the same in accordance with law.

Draw decree accordingly.

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in open Court on this the **30th day of March, 2021**).

**(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 : Rajashekar N.S.

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE
PLAINTIFF**

Ex.P.1	11 Invoices in all.
Ex.P.2	8 lorry receipts.
Ex.P.3	Office copy of demand notice dated 26.10.2018.
Ex.P.3a & b	Postal Receipts
Ex.P.4 & 5	Sealed returned RPAD cover along with RPAD covers.
Ex.P.4a & 5a	Sealed covers opened in open court, notices in it.
Ex.P.6	Certificate of provisional registration from GST. REG-25.

**LIST OF WITNESSES EXAMINED ON BEHALF OF THE
DEFENDANT**

NIL

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE
DEFENDANT**

NIL

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

The Judgment is pronounced in Open Court (vide separate judgment). The operative portion of the said Judgment is as follows :-

ORDER

The Suit filed by the plaintiff claiming Rs.10,00,000/- along with cost and future interest @ 18% p.a., from the date of suit till realization against the defendant is decreed with costs.

The defendant is directed to deposit the suit claim within two months from today failing which plaintiff is at liberty to recover the same in accordance with law.

Draw decree accordingly.

LXXXV ACC & SJ, B'LURU.