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Exh:- 40/A

Received on : 08/08/2014

Registered on :08/08/2014

Decided on : 30/03/2018

Duration : 03 07 22

Y M Ds.

**IN THE COURT OF HON'BLE 3rd ADDL. SR.CIVIL JUDGE,
AT GANDHIDHAM - KACHCHH.**

Spl.Summary Civil Suit No.48 of 2014.

Plaintiff :-

M/s. Shreeji Power & Insulators Pvt. Ltd.

A company registered under the Indian Companies Act,
Having its registered office at Kiran House,
Plot No.8, Sector-8, Opp.Gandhidham Main Post Office,
Gandhidham-Kutch.

V/s.

Defendants :-

[1] M/s.Volt-Age Infra Pvt. Ltd.

C-403, 4th Floor, Business Court,
Mukund Nagar, Opp SKC Mall,
Pune-411037 – Maharashtra.

[2] Mr.Suresh Nikam

Director of M/s. Volt-Age Infra Pvt. Ltd,
C-403, 4th Floor, Business Court,
Mukund Nagar, Opp SKC Mall,

Pune-411037 – Maharashtra.

[3] Mrs. Ujjwala Nikam

Director of M/s. Volt-Age Infra Pvt. Ltd,

C-403, 4th Floor, Business Court,

Mukund Nagar, Opp SKC Mall,

Pune-411037 – Maharashtra.

Sub :- Suit filed under Order XXXVII of CPC.

APPEARANCE :-

Learned Advocate Mr.M.R.Sharma for the Plaintiff company.

No one turned up on behalf of the defendants.

:: J U D G M E N T ::

Short facts :-

1. Present plaintiff company has come forward before this Court and filed the present suit under Order 37 of Civil Procedure Code for recovery of due amount alongwith interest, the short facts of the present suit, are summarized as under :-
2. That the above plaintiff company is registered under the provisions of the Indian Companies Act having it's office at mentioned above and the present complaint has been filed thorough its Sr.Manager & authorized signatory. It is submitted by the plaintiff company that it manufactures of

various types of insulators as well as doing other types of business.

2.1 It is the say of the plaintiff company that the defendant No.1 company had issued purchase order bearing No.VIPL-12-13-000046, dated 21/05/2012 Disc Insulator-120 KN and 2, Disc Insulator-70. That as per the order of the defendants, the plaintiff company supplied the goods to the defendant and as per the instructions of the defendants, the goods were delivered by road transport.

2.2 It is further submitted by the plaintiff company that the defendants have received the material in good conditions, the price of material was to be paid as per the terms and conditions of the purchase order. Defendants have also agreed to pay Rs.10,000/- for packing and loading charges each lorry and the materials was delivered in 3 lorries.

2.3 It is also submitted that the plaintiff company has issued invoices to the defendants for the goods supplied to them as per the purchase order which are as follows :

Invoice Number	Date	Amount in Rs.
SPIPL/000001	09/06/2012	8,23,101/-

SPIPL/000002	20/06/2012	7,27,762/-
SPIPL/000003	29/06/2012	3,84,042/-
SPIPL/2012-13/001	06/07/2012	30,000/-
	Total	19,64,905/-

2.4 It is further submitted that the defendant No.1 company had issued cheque bearing No.866579 dated 20/07/2012 for an amount of Rs.19,64,900/- drawn on SBI, Comm.Branch, Tilak Raod, Pune against the payment of full and final consideration amount towards the goods supplied to the defendants as per purchase order assuring that the said cheque will be honoured on presentation for collection through bankers.

2.5 It is the say of the plaintiff company that the plaintiff presented the said cheque to its bankers i.e. HDFC Bank Ltd, Gandhidham and the said cheque was sent for collection, but the said cheque vide intimation/cheque return memo dated 01/08/2012 of SBI returned without collection with the remarks "insufficient funds". That on receipt of the communication of dis-honour of the said cheque, plaintiff have issued legal notice dated 22/08/2012 by Reg.A.D.Post

through their Advocate U/s. 138 of the N.I.Act to the defendants No.1 to 3 for demanding the payment of cheque amount within fifteen days. Defendants have received the said notice,but, failed to pay the outstanding amount to the plaintiff company.

2.6 It is also submitted that the defendants No. 2 & 3 are the directors of the defendant No.1 company and all of them are responsible persons for the active management and day to day affairs of the plaintiff company and they are responsible for the offences committed by them in the matter. That inspite of the said notice, the defendants have neglected to make the payment of the outstanding amount, hence, the plaintiff has filed complainant U/s.138 of the N.I.Act before the Court at Gandhidham.

2.7 It is further submitted that after filing of above said complaint, defendants No.1 to 3 have made payment of Rs.10,00,000/- by RTGS dated 19/07/2013 vide UTR No.SBI1907137898622 to the plaintiff company and promised to make payment of remaining amount within one month.

But, defendants have failed and neglected to make payment of said outstanding amount till date.

2.8 That the suit is based on written contract between the parties and cheque which was issued by defendants No.1 to 3 as such the suit is filed under the provision of order 37 of the CPC. Thus, the defendant owes a sum of Rs.9,64,905/- towards the goods supplied to the defendants as purchase order alongwith interest @24 % from the 1st August,2012 till 31/07/2014 totaling to Rs.6,93,970/-

2.9 That the cause of action has arisen when the cheque given by the defendants dishonored and when the defendant failed to pay the outstanding amount inspite of receiving legal notice dated 28/8/2012 and when the defendants have made part payment of the due amount. That the present suit is filed within time limitation and the purchase order is given at Gandhidham and the register office of the plaintiff is situated at Gandhidham and hence, this Hon'ble Court has jurisdiction to try the present suit.

2.10 Under the above facts and circumstance, plaintiff has prayed that the issued summons of the suit to the defendants as per the provisions of Order 37 of CPC and it is also prayed that the judgment and decree ordering to the defendants No.1 to 3 to pay an amount of Rs.16,58,875/- alongwith interest @ 24 % per annum from the date of filing the suit and the cost may be awarded.

3. After filing the present suit by the plaintiff, the summons was issued under order 37-R-2 of CPC by Registered A.D.Post to the defendants. But, neither the defendants nor their pleader appeared before the Court and nor filed any reply against the suit of the plaintiff company.
4. In support their case, plaintiff company has filed following oral as well as documentary evidence, which are running as under :-

Sr. No.	Particulars	Exhibit
	<u>Oral Evidence :-</u>	
1	Affidavit of Evidence of Shri Oliver Baptist for issue of summons of judgment.	21
	<u>Documentary Evidence :-</u>	
1	Copy of Resolution passed in Board of	26

	Directors of plaintiff company	
2	Copy of Purchase order No.VIPL-12-13-000046	27
3	Copy of SPIPL/000001 for an amount of Rs.8,23,101/-	28
4	Copy of SPIPL/000002 for an amount of Rs.7,27,762/-	29
5	Copy of SPIPL/000003 for an amount of Rs.3,84,042/-	30
6	Cheque No.866579 for an amount of Rs. 19,64,900/- drawn at SBI, at Pune	38
7	Copy of return memo by SBI	39
8	Copy of legal notice by plaintiff to defendants.	31
9	Copy of postal receipts	Frm 32 To 34
10	Copies of acknowledgment	35 & 36
11	Debit note issued by plaintiff to defendant.	37

5. I have heard the arguments advanced by the Ld.Advocate for the plaintiff company and perused the pleading, evidence & other material available on record.

6. Present suit is filed by plaintiff under order 37 and the notice was also served under Order 37, R-2 of CPC, so, it is necessary to reproduce the Order 37 rule (2)sub rule (3) of C P C are as under....

The defendant shall not defend the suit referred in sub rule (1) unless he enters an appearance and in default of his

entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, upto the date of the decree and such sum for costs as may be determined by the high court from time to time by rules made in that behalf, and such decree may be executed forthwith.

7. In the light of above provisions and looking to the record of the present case, the summons in summary suit under Order 37 R.2 was issued to the defendants, which is recorded at Exh.10, but neither the defendants nor their Advocate appeared before the Court nor filed written statement and reply to protest the present matter of the plaintiff. Thereafter, plaintiff filed an application under order 37 rule(2) and pray for judgment and order passed in favour of plaintiff.
8. Further as per the principle laid down in *AIR 1998 Delhi, page 183*, in the case of *Vijayee Home loan Ltd V/s. M/s. Crown Traders*, wherein the Hon'ble High Court has held

that “As the defendant failed to enter appearance within ten days of the service of summons, the allegations made in the plaint shall be deemed to be admitted by then under said sub rule (3) of Rule 2 of Order XXXVII of C.P.C., the plaintiff is thus, entitled to get a decree for the suit amount with interest.

9. It is pertinent to note that the plaintiff has submitted in it's plaint para “16” that the defendant owes a sum of Rs. 9,64,905/- towards the goods supplied to the defendants as per purchase order alongwith interest @ 24 % from 1st August,2012 till 31/07/2014 totaling to Rs.6,93,970/- and therefore, plaintiff has prayed for total amount of Rs.16,58,875/-. But, here in the instant matter, plaintiff company has not produced any rebuttal evidence with regard to rate of interest at the rate of 24 % on due amount which was calculated by the plaintiff and hence, not entitled interest as asked by them. To prove the present matter, plaintiff has submitted documentary evidence from Exh.26 to Exh.39 and by adducing these evidences, plaintiff has partly

proved its' contention which is mentioned in the plaint. In view of the above, this Court is of the view that the plaintiff company is entitled to get an amount of Rs.9,64,905/- from the defendants. On the other side, defendant has failed to file application for leave to defendant and also not filed any rebuttal evidence to disprove the facts of the plaintiff. As per the prayer of the plaintiff side, plaintiff has asked interest @ 24 % p.a. on due amount, but, plaintiff has not produced any rebuttal evidence regarding the rate of contract. Plaintiff is entitled to get the interest as per the norms prescribed under the C.P.C. and present market situation, but there is no any written contract between the parties regarding the rate of interest and hence, plaintiff is not entitled to get interest as asked for, but looking to the present market situation and Section - 34 of the Civil Procedure Code and the interest rate of the Nationalization Bank, plaintiff is entitled to get interest @ 6 % p.a. on the suit amount i.e. Rs.9,64,905/- from the date of the suit till its realization of the suit amount.

10. Looking to the plaint and prayer of plaintiff as well as documentary evidence which are submitted alongwith plaint, it is specifically stated in Order 37 Rule 3 of CPC, if defendant shall not defend suit the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree. Under the facts and circumstances, evidences led by the plaintiff side and in all sets of discussion, plaintiff is entitled to get decree under Order 37, Rule 3 of Civil Procedure Code and hence, I pass the following final order in the larger interest of justice.

:: ORDER ::

- 1] Present suit is hereby partly allowed.
- 2] The Defendants No. 1 to 3 are hereby ordered to pay of Rs. 9,64,905 (Rs. Nine Lac Sixty Four Thousand Nine Hundred Five Only) with 6 % interest p.a. from date of filing the present suit till its realization of the suit amount from the defendant.
- 3] Defendants shall bear the cost of the plaintiff.
- 4] Decree be drawn accordingly.

Pronounced and declared in open Court on 30th March,2018.

Sd./-

[Zakirhussen Yasinmiya Rangrez]

3rd Addl. Senior Civil Judge,
Gandhidham-Kachchh.

[GJ 00 980]

Date :- 30.03.2018.