



[C.R.P. 67]

Govt. of Karnataka

Form No.9 (Civil)
Title Sheet for
Judgment in Suits
(R.P.91)

IN THE COURT OF THE LXXXVI ADDL. CITY CIVIL JUDGE
AT BANGALORE [CCH.No.87]

Present:

Sri.SUNIL ANDANAPPA SHETTAR, B.Sc., LLB., (SPL)
LXXXVI ADDL. CITY CIVIL JUDGE

Dated this the 25th day of August, 2022

Com.O.S.No.5042/2019

Plaintiff/s : Kensico Digital Marketing Private Limited
Innovation, No.101, HSBC Layout, Domlur,
Bangalore-560071
Represented by its director,
Mr.K.G.Manjunatha

(By H.S.Advocate)

- Vs -

Defendant/s : M/s. Unishire Housing LLP,
No.36, Railway Parallel Road,
Nehru Nagar, Next to Reddy Petrol Bunk,
Bengaluru-560020.

Also at

#36, Railway Parallel Road, Nehru Nagar,
Kumarapark (W), Bangalore-560020.

Represented by its Director
Mr.Praveen Kumar Nandakumar.

(Defendant placed exparte)

Date of institution
of the suit : 10.07.2019

Nature of the suit
[suit on pronote, suit
for declaration and
possession, suit
for injunction] : Recovery of Money

Date of the commencement
of recording of the evidence : 01.08.2022

Date on which the
Judgment was pronounced : 25.08.2022

	Year/s	Month/s	Day/s
Total Duration	03	01	15

(SUNIL.A.SHETTAR)
LXXXVI Addl. City Civil Judge
Bangalore.

J U D G M E N T

This is the suit filed by the plaintiff company against the defendant to pay a sum of INR.8,51,850/- (Rupees Eight Lakhs Fifty One Thousand Eight Hundred and Fifty Only) together with interest at the rate of 24% p.a from the date of institution of the suit till realization and costs.

2. The brief facts of the plaintiffs' case are as under:

That the plaintiff is a company incorporated under the Companies Act, 1956 having its registered office at

Bangalore as shown in the cause title of the plaint. The plaintiff is in the business of end to end digital marketing services and solutions in Bangalore and a recognized entity in marketing services industry, standing for trust, reliability and quality. The plaintiff had rendered services to the defendant in the nature of providing email digital marketing services and solutions for a period of one month i.e. during the month of December 2015 and raised one invoice in the month of December 2015 and sent the same to the defendant for payment. However, the defendant willingly neglected the invoices and wrongfully benefited from the services rendered by the plaintiff for the said Impugned Period.

3. The aggregate amount due to the plaintiff by the defendant is Rs.8,51,850/- The plaintiff has sent reminders to the defendant through emails during December 2015 till April 2017 with a request to make full payment of the outstanding amount. The defendant has replied four times by way of emails dated 10/02/2016, 16/02/2016, 29/06/2016 and 23/03/2017 and also a letter dated 11/04/2017 in which he has requested to grant

more time to pay the aggregate debt. However, no payment has been made either in part or full towards the aggregate debt due to the plaintiff until this day. In spite of repeated requests and demands made by the plaintiff, the defendant has failed to make the payment. It is alleged that the defendant has willfully cheated the plaintiff of his monies. Thereafter, the plaintiff got issued a legal notice dated 26.07.2018 to the defendant through its counsel and an email dated 31.07.2018 to the representatives of the defendant. Hence on these grounds the plaintiff has prayed to decree the suit.

4. The cause of action for the suit is mentioned as it arose on 01.04.2017 when the defendant did not make timely payment for the services of the plaintiff, subsequently on 26.07.2018 when the plaintiff demanded the payment and thereafter, when the plaintiff issued the legal notice.

5. In spite of issuance of suit summons through court, RPAD and by way of substitute service i.e., by paper publication, the defendant has failed to appear and hence, he has been placed *ex parte*.

6. On the basis of the averments of the plaint and considering the materials available of record the following points arises for my consideration:

1. Whether the plaintiff company proves that it has rendered email digital marketing services and solutions for the month of December 2015 to the defendant and raised an invoice?
2. Whether the plaintiff further proves that the defendant has failed to pay the entire amount for having availed the services and committed breach of the contract?
3. Whether the plaintiff further proves that the defendant is liable to pay the balance outstanding of Rs.8,51,850/- towards the services availed by it from the plaintiff?
4. Whether the plaintiff further proves that it is entitled for interest at the rate of 24% p.a as claimed in the plaint?
5. What order or decree

7. The authorized representative of the plaintiff company has been examined as P.W.1 in order to substantiate the case of the plaintiff and got marked the documentary evidence, which are at Ex.P.1 to Ex.P.6 and The authorized representative of plaintiff company has been examined as P.W.2 and marked Ex.P.7 to Ex.P.8.

8. Having heard the arguments of the counsel for the plaintiff and considering the averments of the plaint as well as the oral and documentary available on record, I answer the above points as under:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : Partly in the Affirmative

Point No.5 : As per final order
for the following;

REASONS

9. **Points No.1 to 4:-** Since all these points require common discussion, they will be taken up together for discussion in order to avoid repetition of facts.

It is the case of the plaintiff that it has rendered email digital marketing services and solutions for the period of one month i.e., December 2015 to the defendant and raised invoices. It is the allegation of the plaintiff that the defendant has made part payment, but

has failed to pay the balance outstanding and committed breach of contract.

10. The dispute between the parties is in respect of payment of money for having availed the digital marketing services and solutions by the defendant from the plaintiff and hence, the nature of the transaction is commercial as defined U/s 2 (1) (c) of the Commercial Courts Act, 2015 and the specified value of the subject matter of the suit as defined U/s 2 (c) (I) of the said act is more than Rs.3,00,000/- (Three Lakhs Rupees Only) and hence this court has jurisdiction to entertain the suit.

11. The authorized representative of the plaintiff who has been examined as P.W.1 has reiterated the averments of the plaint and got marked the documentary evidence, which are at Ex.P.1 to Ex.P.6. Further the plaintiff has also got examine one witness who is also the authorized representative of the plaintiff and got marked two documents which are at Ex.P.7 and Ex.P.8. Ex.P.1 is the invoice dated 28.12.2015, which contains the decription of the services provided by the plaintiff to the defendant, its rate and the total amount as well as the

payment of service tax and all other particulars of the plaintiff and defendant. The said invoice also contains certain terms and condition with respect to the mode of payments. Ex.P.2 is the excel sheet showing the outstanding balance amount to be paid by the defendant to the plaintiff. Ex.P.3 are the email correspondences between the plaintiff and the defendants which discloses that the plaintiff has provided digital marketing services and solutions to the defendnats. Ex.P.4 is the office copy of the legal notice dated 26.07.2018. Ex.P.5 is the copy of email dated 31.07.2018. Ex.P.6 is the certificate U/s. 65-B of the Indian Evidence Act pertains to email communications. Ex.P.7 is the copy of the board resolution. Ex.P.8 is the ledger extract along with certificate U/s. 65 B(4) of Indian Evidence Act. All the documentary evidence placed by the plaintiff are sufficient to hold that it has provided digital services and solutions to the defendants by raising invoices as averred in the plaint. The documentary evidence relied upon by the plaintiff establishes that the outstanding amount to be paid by the defendant to the plaintiff is Rs.8,51,850/-

as on the date of suit. The said statement of account is maintained by the plaintiff during the regular course of its business, which has got evidentiary value under the Indian Evidence Act. The evidence of P.W.1 on oath and the documentary evidence relied upon the plaintiff remains unchallenged. The plaintiff has established and proved that the defendant having availed the services of the plaintiff has failed to make payment and committed breach of contract.

12. The plaintiff has claimed future interest at the rate of 24% p.a from the date of suit till its payment. The invoice discloses that there is one of the condition with respect to payment of interest i.e., if the payment is not made as per agreed terms, interest at the rate of 24% will be charged on the outstanding amount. The court is empowered to grant future interest exceeding 6% p.a. but shall not exceed the contractual rate of interest in a commercial suit. Considering the nature of the suit and the purpose of loans obtained by the defendant, I am of the opinion that future interest at the rate of 9% p.a. from the date of institution till realization. Hence, the

defendant is liable to pay future interest at 9% p.a from the date of suit till realization. Hence, I answer points No.1 to 3 in the 'Affirmative' and point No.4 'Partly in the Affirmative.

13. **Point No.5:-** Since I have answered points No.1 to 3 in the 'Affirmative' and point No.4 'Partly in the Affirmative', I proceed to pass the following;

ORDER

The suit of the plaintiff is hereby decreed with costs.

It is ordered and decreed that the defendant is liable to pay to the plaintiff a sum of INR.8,51,850/- (Rupees Eight Lakhs Fifty One Thousand Eight Hundred and Fifty Only) together with interest at the rate of 9% p.a from the date of suit till realization.

Draw decree accordingly.

The office is hereby directed to send copy of this order to the parties to the proceedings to their respective email

ID as required under order 20 rule 1 of
CPC and as amended under section 16 of
the Commercial Courts Act, 2015.

[Dictated to the stenographer, online transcribed & computerized by her,
corrected on computer and signed by me then pronounced in the Open Court, dated
this the 25th day of August, 2022]

(SUNIL.A.SHETTAR)
LXXXVI Addl. City Civil Judge
Bangalore.

ANNEXURE

List of witnesses examined on behalf of the plaintiff/s:

P.W.1 : Manjunatha K.G.

P.W.2 : Fakharuddin Ali Ahmed

List of documents marked on behalf of the plaintiff/s:

Ex.P.1 : Computer downloaded invoice.

Ex.P.2 : Excel sheet pertaining to the outstanding of the defendant.

Ex.P.3 : Computer downloaded email correspondences during December 2015 to April 2017 consisting of eight pages.

Ex.P.4: Office copy of the legal notice dated 26.07.2018.

Ex.P.5: Copy of email dated 31.07.2018.

Ex.P.6: Certificate U/s. 65-B of the Indian Evidence Act pertains to email communications.

Ex.P.7: Copy of the board resolution.

Ex.P.8: Ledger extract along with certificate U/s. 65 B(4) of Indian Evidence Act.

List of witnesses examined on behalf of the defendant/s:

- NIL -

List of documents marked on behalf of the defendant/s :

- NIL -

LXXXVI Addl. City Civil Judge
Bangalore.