

Received on : 22-10-2012

Registered on : 22-10-2012

Decided on : 10-07-2019

Duration : Yrs. Mts. Days.

Exhibit - ____.

**IN THE COURT OF 14th ADDITIONAL SENIOR CIVIL JUDGE
SURAT**

SPECIAL CIVIL SUIT No. 532 of 2012

PLAINTIFF:-

Garden Silk Mills Limited, a Public Ltd. Co.

Registered Office At - Garden Mills Complex, Sahara
Gate, Surat. Represented by its authorized signatory

Shri Debdutta Chatterjee

Age - 47, Occupation - Service,

Residing at, as above.

V E R S U S

DEFENDANT :

Airox Nigen Equipments Pvt. Ltd., a Pvt. Ltd. Co.

Occupation - Business, Address - 21, The Chambers,
Near Hotel Grand Bhagwati, Bodakdev, Ahmedabad.

Subject:- Suit for recovery of Rs.17,65,575/-

APPEARANCES:

Ld. Advocate Mr. T. J. BAXI for the plaintiff.

Ex-parte against the defendant.

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

The shorts facts of the present plaintiff's suit may be stated as under :-

1. It is say of the plaintiff, that the plaintiff is a Public Limited Co. incorporated under the provisions of The Company Act 1956, under the name of Garden Silk Mills Limited, situated at Garden Mills Complex, Sahara Gate Dist. Surat. It is averred by the plaintiff that, the defendant is a company incorporated under the Provisions of Companies Act and carries on the business of air drying units and plaintiff's issue purchase order dated 15th April, 2011 with the defendant for supplying of low pressure air trial unit (adu) amounting to Rs. 31,50,000/- and it was finalized between the parties that 20% of the amount of purchase order was to be paid as advance and the plaintiff has discharged its obligation and paid Rs. 6,30,000/- to the defendant. Thereafter, the defendant informed the plaintiff by e-mail dated 23rd June, 2011 that it was unable to execute the purchase order for value Rs. 31,50000/-, and the revise purchase order for value Rs. 46,62,460/-, but the plaintiff did not agree to the new proposal of the defendant and cancelled the aforesaid new proposal.

Thereafter plaintiff had sent separate cancellation order on 12.07.2011. Therefore, on account of the defendant's inability to execute contract violation of the terms and condition, the plaintiff was compelled to seek and purchase the new vendor for ADU from M/s. Atoms and from M/s. Puja Agencies for the cost of Rs. 41,28,000/-. Therefore, it is averred by the plaintiff that, the plaintiff has suffered huge loss for the default of defendant and, therefore, the present suit is filed.

2. Upon institution of the present suit, summons was issued against the defendants, which were duly served upon him, but the defendant has failed to appear before the court and, as there was no defence raised by the defendant, defendant's right to file the written statement was closed and the suit was directed to proceed ex parte against the defendant.

3. Having regard to the rival contentions of the parties, my Ld. Predecessor has framed the following issues at Exh. ____

ISSUES

1. Whether the plaintiff proves that, an agreement to sell was arrived at and executed between the parties and sale consideration of the suit property was fixed @Rs.31,50,000/- ?

2. Whether the plaintiff proves that, he has paid Rs.6,30,000/- as part payment towards sale consideration to the defendant ?
3. Whether the plaintiff proves that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, but the defendant has failed to perform his part of contract ?
4. Whether the plaintiff proves that, the defendant has himself cancelled the sale agreement ?
5. Whether the plaintiff proves that, the defendant has not paid to him the earnest money of Rs. 6,30,000 ?
6. Whether the plaintiff is entitled to get the relief as prayed for ?
7. What order and decree ?

4. Answers of the aforesaid issues are as under :

1. In the affirmative.
2. In the affirmative.
3. In the affirmative.
4. In the affirmative.
5. In the affirmative.
6. In the partly affirmative.
7. As per final order.

5. Thereafter, the plaintiff has produced the following oral as well as documentary evidence in support of his case:

Oral Evidence

S. Nos.	Particulars	Exhs.,
1.	Chief Examination of plaintiff, Sri Debdutta Chatterjee, Authorized Signatory of Garden Silk Mills Ltd.	21

Documentary Evidence

S. Nos.	Particulars	Exhs.,
1.	Certified copy of Memorandum and Articles of Associations	23
2.	Xerox copy of Resolution	24
3.	Xerox copy of P.O No. JC7-103064 along with Annexure I,II and III T&C	25
4.	Xerox copy of negotiation sheet	26
5.	Xerox copy of Letter written by the plaintiff	27
6.	Xerox copy of Cheque No. 203133	28
7.	Xerox copy of letter written & sent to the plaintiff	29
8.	Xerox copy of letter written & sent to the defendant	30
9.	Xerox copy of letter written & sent through e-mail by the plaintiff to the defendant on 05.07.2011	31

10.	Xerox copy of the letter written by the defendant to the plaintiff	32
11.	Xerox copy of letter written & sent to the defendant through e-mail on 13.07.2012	33
12.	Xerox copy of letter written by the plaintiff to the defendant on 02.09.2012	34
13.	Xerox copy of letter written by the plaintiff to the defendant on 25.08.2011	35
14.	Xerox copy of letter written by the defendant to the plaintiff on 26.08.2011	36
15.	Notice dated 20.02.2011	37
16.	Receipt	38
17.	Acknowledgment	39
18.	Xerox copy of P.O. Nos. JC7-108466 and 108493 on 11.07.2011	40-41

6. Thereafter, the plaintiff filed his closing pursis and thereby declared that he did not want to lead any further evidence in support of his case.

7. I have heard, learned Advocate for the plaintiff. Learned Advocate has submitted that, though, the defendant has executed an agreement with plaintiff, the defendant has failed to carry the terms and conditions, therefore, it is submitted that, the

plaintiff's suit is required to be decreed, as prayed for. It is further submitted that, the defendant has not challenged the plaintiff's suit, therefore, it is submitted by the learned Advocate for the plaintiff, that the plaintiff's suit has been proved by the plaintiff and, therefore, necessary decree is required to be passed.

8. Reasons for arriving all the aforesaid conclusions and answers of the issues, the following reasons have been assigned thereto -

REASONS

9. Issue No. 1 to 6.

As all the issues are *inter se* connected, they were discussed jointly for the sake of brevity and convenience.

9.1 It is required to be noted that, though, the summons of the suit was duly served upon the defendant, the defendant has failed to appear before the Court and also the defendant has failed to file his written statement, therefore, defendant's right to file the written statement was closed and the present suit was ordered to be proceeded *ex parte* against the defendant. Therefore, it is transpired from the record that, the present suit has not been challenged by the defendant.

10. As per the settled principles of law, though, the defendant has not challenged the plaintiff's suit as discussed herein above as per Section 101 of the Evidence Act, it is duty

of the plaintiff to prove his case with cogent and trustworthy evidence and negative burden to disprove the plaintiff's case cannot be shifted upon the shoulder of the defendant, but as discussed herein above, when the plaintiff has asserted that the sale agreement was executed by him in favour of the plaintiff, the defendant has failed follow the terms and conditions of the agreement and the defendant has also failed to pay the advanced money. It is borne out from the evidence produced by the plaintiff that, the plaintiff has produced the extract of minutes of the meeting of Board of Directors which transpires that the present plaintiff has been authorized for filing the present suit, therefore, it is proved that the plaintiff has power to institute the present suit.

11. The plaintiff has also produced purchase order vide Exh. 25, which shows that the purchase order was executed between the present plaintiff and defendant on 15.04.2011 and the total price for lower pressure air dryer units was fixed as Rs. 31,50,000/-. The plaintiff has filed a letter sent to the defendant and, thereby, paid 20% of the purchase order and Exh. 28 transpires that the cheque of Rs. 6,30,000/- had been issued in favour of the defendant. The other document goes to show that the purchase order was not fulfilled by the defendant and the amount has also not been returned by the defendant, hence, the documents show that the plaintiff has paid the alleged amount of 6,30000/- to the defendant. This fact has not been denied by the defendant by filing written statement or by any documentary

evidence, therefore, the facts of having paid the aforesaid amount is proved and, therefore, the plaintiff is entitled to get the aforesaid amount back from the defendant. It is required to be noted that the plaintiff has prayed for interest on the aforesaid amount at the rate of 18% p.a., but as per the Section 34 of the Code of Civil Procedure, if 6% int. is awarded then it would meet the substantial justice to the parties. Considering the entire oral as well as the documentary evidence, the plaintiff has proved his case and, therefore, the issues are answered accordingly.

12. Issue No. 7.

In view of the foregoing discussion, the following final order is passed in the interest of justice.

ORDER

- The plaintiff's suit is hereby partly decreed.
- The defendant do pay to the plaintiff the sum of Rs. 6,30,000/- (Rupees Six Lacs and Thirty Thousand only) with interest thereon at the rate of 6 % per annum from the date of filing the suit to the date of realization of the said sum.
- Defendant shall bear his own cost and cost of the plaintiff.
- Decree be drawn accordingly.

Pronounced & signed in the open Court on 10th day of July, 2019.

Date: 10/07/2019

**(Sanjaykumar Chhaganbhai Makvana)
14th Addl. Sr. Civil Judge, Surat
GJ00920.**