

MHCC040011462023



Presented on : 02-02-2023
Registered on : 03-08-2023
Decided on : 23-04-2026
Duration : 2yrs, 8ms, 20days

Exh. 26

IN THE CITY CIVIL COURT AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI

COMMERCIAL SUIT NO. 653 OF 2023

Infinity Freight Services Pvt. Ltd.

(Through its Authorized representative

Mr. Ankit Dubey)

having its address at : 601, Sixth Floor, C Wing,
Mangalya Premises Co-operative Society Limited,
Off. Marol Maroshi Road, Near Marol Fire Brigade,
Marol, Andheri (East), Mumbai – 400 059.

..... Plaintiff

V/s.

Laxmi Group of Industries

Through its Proprietor Lata Navnath Gole

All having their address at Office No.705

and 706, Shelton Cubix, Sector-15,

CBD Belapur, Navi Mumbai- 400604.

.....Defendant

Appearances :-

Adv. Dwarkesh Chavda, the Ld. Counsel for plaintiff.

Defendant proceeded ex-parte.

Coram: Her Honour Ad-hoc Judge,

Smt. S. N. Sachdeo

(C. R. No. 12)

Date : 23rd April, 2026

JUDGMENT

The present Suit is filed by the Plaintiff for recovery of Rs. 12,37,937/- and further interest @ 24% p.a. from the date of institution of this suit till the payment and/or realization of the suit.

2. **Briefly stated, plaintiff's case is as under:-**

It is contended that the plaintiff is Private Limited Company, whereas the defendant is Proprietorship concern. The plaintiff is engaged in the business of clearing, forwarding and shipping agents for its various clients. The defendant availed services as clearing and forwarding agents for the purpose of exporting their Sea Export Consignments from Mudra Port to Daman Port and various other places towards freight charges, liner charges, CFS charges etc. Accordingly, the consignments were exported by the plaintiff and same were duly received and acknowledged by the defendant of total worth Rs. 56,72,801/-, out of which invoices worth Rs. 12,37,937/- are not yet cleared by the defendant. The defendant made part payment of Rs. 44,34,868/-, but failed to make payment of remaining amount.

3. It is further contended that the plaintiff issued E-mail on 26/07/2022 with a request to make payment of amount due towards defendant. However, defendant failed to do so. Lastly, plaintiff issued demand notice on 20/10/2022, which was returned back with a remark "Left". Thereby, defendant failed to make payment of said amount. Hence, the plaintiff has filed suit for recovery of Rs. 12,37,937/- with further interest of 24% p.a. Further the defendant is also liable to pay interest Rs. 2,22,828/- towards interest at the rate of 24% p.a. on the

principle amount.

4. On 10/11/2022 the plaintiff instituted Pre-Institution Mediation as per Rule 3(4) and (6) of Commercial Courts Act, 2018, bearing O. W. No. 2064/2022. However, the defendant failed to appear in said Pre-institution Mediation. Hence, the DLSA Authority issued Non-Starter Report dated 19/12/2022.

5. Defendants, though duly served with writ of summons, failed to appear and contest the suit hence, the suit proceeded ex-parte against him by an order dated 23/08/2024.

6. The Plaintiff filed affidavit of evidence and produced original documents which were duly exhibited as Exhs. 11 to 23. The plaintiff filed evidence closer pursis Exh. 24. Defendant did not file evidence or documents.

7. Heard the learned counsel for the plaintiff. From the averments in the plaint, documents filed on record and written notes of argument filed by learned counsel for the plaintiff. Following points arise for my determination and I recorded my findings for the reasons stated therein:-

<u>Sr. No</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Does the plaintiff proves that the defendant is liable to pay outstanding amount of Rs. 14,60,765/- towards consignment charges ?	Partly yes, to the extent of Rs. 12,37,937/-

2)	Whether the Plaintiff is entitled to interest as claimed, and if so, at what rate and from which date?	Yes, at the rate of 9% P.A. from the date of suit till its realisation.
3)	What order and decree?	Suit is partly decreed with costs.

REASONS

Point No.1 :

8. In order to prove case of the plaintiff, the Plaintiff has filed affidavit of evidence Exh. 9 of Mr. Dhaval M. Valia (PW1), Director and authorized representative of the plaintiff, reiterating the averments of the plaint and tendered following documents:

Sr. No.	Exhibit No.	Description
1	Exh.11	Master data of the plaintiff obtained from the Ministry of Corporate Affairs.
2	Exh.12	Bill of Lading for Ocean Transport Multimodal transport.
3	Exh.13	Ledger of the defendant.
4	Exh.14	Invoices.
5	Exh.15	Email dated 31/05/2022.
6	Exh.16	Email correspondence between plaintiff and defendant dated 18/07/2022.
7	Exh.17	Email dated 26/07/2022 and 05/08/2022 by Plaintiff.
8	Exh.18	Email conversation between plaintiff and defendant dated 26/09/2022.
9	Exh.19	Demand Notice dated 20/10/2022 of the plaintiff.

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|----|---------------|---|
| 10 | Exh.20 | Returned consignment along with postal receipt, internet Tracking Report and A.D. Card. |
| 11 | Exh.21 | Pre-institution mediation application dated 10/11/2022 at Outward no. 2064/2022. |
| 12 | Exh.22 | Non-Starter Report dated 19/12/2022. |
| 13 | Exh.23 | Certificate (Under Section 63 of Bhartiya Sakshya Adhinyam, 2023). |

9. Mr. Dhaval (PW1) has testified documents Exhs. 11 to 23 after entering into witness box. His evidence remained unchallenged as the matter proceeded ex-parte against the defendant. The pleadings and documentary evidence on record clearly establish that the defendant under consignment order availed services of clearing and forwarding agents for the purpose of exporting its sea export consignment etc. and placed order from time to time.

10. In pursuance of these orders, the plaintiff exported and provided said services which are availed by the defendant as freight forwarding for which plaintiff raised various invoices and acknowledged by the defendant as per bill of lading for ocean transport multi-modal transport on four occasions of total worth Rs. 56,72,801/-. But, defendant made payment of only Rs. 44,34,868/- raised invoices which are exhibited at Exh. 14. Said invoice bears signature of the plaintiff issued in favour of the defendant. Further it shows defendant's acknowledgment of receipt of consignment services and no objection has been raised by the defendant at any point of time. As per claim of the plaintiff amount of Rs. 14,60,765/- is due and outstanding amount against the defendant together with interest @ 24% p.a. from the date

of invoice till the date of realization/payment.

11. The plaintiff has also proved issuance of legal notice, E-mail dated 31/05/2022 Exh. 15, E-mail dated 18/07/2022 Exh. 16, E-mail dated 26/07/2022 and 05/08/2022 at Exh. 17 and E-mail conversation between the plaintiff and the defendant at Exh. 18. The plaintiff also testified demand notice dated 20/10/2022 Exh. 19 and returned envelope Exh. 20 calling upon the defendant to make payment of the outstanding dues. The envelopes are returned with endorsement "Left". In view of Section 26 of the General Clauses Act it amounts to deemed service. Moreover, though the defendant is duly served with suit summons but failed to appear and agitate his grievance if any. It goes to show that the claim of the plaintiff is not disputed by the defendant. Thus, he has also not disputed claim of the plaintiff in any manner by filing his appearance and contesting suit.

12. In the present suit also the defendant despite service of writ of summons failed to enter appearance within the prescribed time. There is nothing on record to suggest that the plaintiff's claim is false or exaggerated. The documentary evidence remained unchallenged and unrebutted. The plaintiff has claimed amount of Rs.14,60,765/- and interest at the rate of 24% p.a..

13. From the oral as well as documentary evidence the plaintiff has proved his case as claimed except quantum of amount. The ledger account of defendant maintained by plaintiff during course of business Exh. 13 which is relevant under Section 34 of Indian Evidence Act indicates that only amount of Rs. 12,37,937/- due and outstanding

against the defendant and rest of the claim amount has already been given. The plaintiff has not filed single document to show and prove that the agreed rate of interest is 24% on account of failure of the defendant to make payment of the outstanding dues. Accordingly, I hold that the plaintiff has successfully proved that the defendant is liable to pay to the plaintiff a sum of Rs.12,37,937/- towards consignment services. Hence, Point No.1 is answered in affirmative.

Point No.2 :-

14. The plaintiff has claimed interest @ 24% p.a. from the date of invoices/delivery of consignment services due till realization. However, no written agreement or contract stipulating such a high rate of interest is produced. Therefore, considering the commercial nature of the transaction interest at the rate of 9% per annum from the date of filing of the suit till realization would be fair, reasonable and in consonance with Section 34 of the CPC. Hence, the plaintiff is entitled to interest at the rate of 9% p.a. on amount due from the date of filing of the suit till realization. Hence, I answer Point No. 2 accordingly.

Point No.3 :-

15. In view of affirmative findings as to point no.1 and 2, the suit deserves to be partly decreed for the amount of Rs. 12,37,937/- with cost at the rate of 9% per annum from the date of suit till realisation of amount. Accordingly, in answer to point no. 3 I pass following order:

ORDER

- 1) The suit is partly decreed with costs.
- 2) The defendant shall pay to the plaintiff a sum of Rs.12,37,937/-

(Rupees Twelve Lakhs Thirty Seven Thousand Nine Hundred and Thirty Seven Only).

- 3) The defendant shall further pay interest at the rate of 9% per annum from the date of filing of the suit till realization of the entire amount.
- 4) Decree be drawn up accordingly.

Date : 23.04.2026

(S. N. Sachdeo)
Ad-hoc City Civil Judge,
City Civil Court,
(Borivali Division),
Dindoshi, Goregaon,
Mumbai

Directly Dictated on Computer : 23.04.2026
Checked & Signed by HHJ on : 23.04.2026

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 23/04/2026 Time : 5.58 P.M. UPLOAD DATE AND TIME	Miss. Tejal C. Rane (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ Smt. S. N. Sachdeo (Court Room No. 12)
Date of Pronouncement of JUDGMENT/ORDER	23.04.2026
JUDGMENT/ORDER signed by P.O. on	23.04.2026
JUDGMENT/ORDER uploaded on	23.04.2026