

Presented on : 02/04/2018  
Registered on : 02/04/2018  
Decided on : 10/06/2019  
Duration : Y. M. D.  
01 02 08

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**IN THE COURT OF CIVIL JUDGE (J.D.), BHOKARDAN**  
(Presided over by Smt. S.S. Bajaj)

**Regular Civil Suit No. 58/2018**  
CNR NO.MHJN060005412018

**Exh. No.19**

Hukumsingh Bahadursingh Chundawat,  
Age : 47 years, Occ. : business.  
R/o. Bhokardan, Tq. Bhokardan,  
Dist. Jalna.

**PLAINTIFF**

– Versus –

Vilas Sukhdev Gaikwad,  
Age: 47 years, Occ. : Business.  
R/o. Wadgaonpan Tq. Sangamner,  
Dist Ahmadnagar.

**DEFENDANT**

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Advocate for the plaintiff - Shri S.S. Chaudhari,  
Advocate for the defendant - Shri A.Y. Shinde

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**JUDGMENT**

(Delivered on 10<sup>th</sup> June, 2019)

This is a suit for recovery of an amount of Rs. 2,80,302/- with accrued interest thereof as per rule.

**02. The brief facts, of the plaintiff's case, are as follows:-**

The plaintiff does business in explosive substance. Accordingly, he runs an enterprise styled as, 'Mateshwari enterprises' at Bhokardan, Dist. Jalna Similarly, the defendant also does business in the said field styled as, 'Omsai Enterprises' at Wadgaonpan. Both parties have business transactions since the year 2015. The defendant regularly used to purchase explosive substances like gelatin etc. On credit from the shop of the plaintiff. Since the year 2015 on many occasions the defendant purchased explosive substances on credit and repaid that amount regularly after receipt of goods. Thus, cordial business relationship has been grown in between the parties.

03. According to the plaintiff, in this way the defendant used to purchase on credit goods from his shop and used to repay that amount regularly. But, on 24/05/2016, he purchased explosive substances of Rs. 4,80,302/- on credit by bill No. ME/977/355, but thereafter he only repaid an amount of Rs.2,00,000/- through RTGS Thus, on 24/05/2016, a sum of Rs. 2,80,302/- were outstanding against him. Thereafter, on many occasions the plaintiff demanded that remaining amount to the defendant, but his all efforts went in vain. Thereafter, on 31/12/2017, the defendant straightway refused to repay said outstanding amount. So, on 02/01/2018, the plaintiff

issued a legal notice to him and requested to repay said amount within 15 days. But, in spite of receipt of said notice on 09/01/2018, the defendant did not repay the amount nor he replied to the notice as well. Hence, the plaintiff has instituted his suit thereby praying for recovery of the aforesaid outstanding amount with accrued interest thereon as per the rule.

04. After the service of summons defendant appeared through advocate Shri. A.Y. Shinde but not filed his written statement. Hence, the suit is proceeded without written statement against him.

05. I have heard the argument of advocate Shri S.S. Chaudhari for the plaintiff and perused the record carefully. Following points arise for my consideration and now I record my findings thereon with the reasons to follow thereunder:-

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
(1)	Does the plaintiff prove that, on 24/05/2016 the defendant purchased on credit the goods i.e. explosive substances worth Rs. 4,80,302/- from his shop and out of which on 24/05/2016 a sum of Rs. 2,80,302/- were outstanding against him ?	...Yes.

- (2) Does the plaintiff prove that, he is entitled for accrued interest, on the aforesaid outstanding amount? Yes
- (3) What order and decree ? Suit is decreed with costs.

### **REASONS**

06. In order to, establish the claim the plaintiff examined himself at Exh. 13. Besides, he relied on the office copy of legal notice dated 02/01/2018, its postal receipt and acknowledgement at Exh.14, 15 and 16 respectively. Further, he relied on the account statement of the defendant for the period of 01/04/2015 to 31/03/2016, at Exh.17.

### **AS TO POINT NO.1 :-**

07. Advocate Shri Chaudhari for the plaintiff argued that, the parties to the suit had regular business transactions since the year 2015 . The defendant regularly used to purchase goods on credit from the shop of plaintiff and after receipt of goods he used to pay its amount. But, on 24/05/2016 he purchased goods on credit of Rs. 4,80,302/- but out of which he only paid total amount of Rs. 2,00,000/- and accordingly a sum of Rs. 2,80,302/- left outstanding against him.

08. The evidence of the plaintiff shows that, he deposed

according to his pleading and according to the aforesaid argument of his counsels. He specifically deposed that, on 24/05/2016 the defendant purchased goods/explosive substances on credit of Rs. 4,80,302/- from his shop, but out of which he only paid total amount of Rs. 2,00,000/- and thus on 24/05/2016, a sum of Rs.2,80,302/- were outstanding against him. Thereafter, on many occasions he demanded that amount to the defendant, but he refused. So, he issued legal notice, but in spite of it, the defendant failed to pay the said amount.

09. Admittedly, aforesaid oral evidence of the plaintiff has remained intact and unchallenged, as in spite of service of summons the defendant did not appear and did not contest the suit. The oral evidence of the plaintiff has also accompanied with the legal notice at Exh. 14. Contention in the notice prima facie shows that, before filing this suit the plaintiff has put forth his all aforesaid grievances before the defendant and had demanded that outstanding amount. But, in spite of receipt of said notice via acknowledgement at Exh. 16, the defendant did not comply in nor he replied the same as well. In my view, if the defendant has any other theory or defence, he would have definitely replied to the notice or would have definitely appeared. But, as he did not do so, thus only inference arises from all these things that he had

purchased goods on credit from the plaintiff and on 24/05/2016 , its sum of Rs. 2,80302/- were outstanding against him.

10. In addition to the aforesaid evidence, the plaintiff has also filed accounts statement of the defendant at Exh. 17 . Said statement clearly shows that, since the year 2015 to 24/05/2016 there had been business transactions between the parties. This statement further shows that, before the date of present transaction on many occasions the defendant had purchased on credit goods form the shop of the plaintiff and paid its price latter on. It further appear from the statement that, on 24/05/2016 by bill No. ME/977/355, the defendant purchased on credit goods worth of Rs. 4,80,302/- from the plaintiff and thereafter on 24/05/2016 he only paid total amount of Rs. 2,00,000/- and thus remaining sum of Rs. 2,80,302/- were outstanding against him.

11. Admittedly, aforesaid accounts statement and entries made therein are relevant u/s. 34 of the Indian Evidence Act, 1872. According to the said provision, entries in books of account including those maintained in an electronic form, regularly checked in the course of business, are relevant whenever they refer to a matter into which the court has to inquire. Said provision also makes it clear that, such statement shall not alone be sufficient

evidence to charge any person with liability. But, in the present case in addition to aforesaid account statement the plaintiff has also shown other relevant evidence, as stated above in relation to the fact in issue. Therefore, in addition to other evidence the account statement of the defendant is relevant and in my view admissible in evidence. Thus, aforesaid discussion prima facie proves that on 24/05/2016 the defendant has purchased on credit goods of Rs. 4,80,302/- and out of them a sum of Rs. 2,80,302/- were outstanding against him. Hence, I answer point No.1, accordingly.

**AS TO POINT NO. 2 :-**

12. The plaintiff is claiming interest over the aforesaid outstanding amount as per rule. The affirmative answer of point No.1 makes it clear that, the amount of Rs. 2,80,302/- are outstanding against the defendant since 24/05/2016. Admittedly, if this amount could have been paid in the regular course of business, the plaintiff could have used said amount. But, the defendant kept him away from the said amount. Thus, the plaintiff is entitled for interest also on the said sum. In that regard, section 34 of the CPC is relevant. This provision provides interest rate on different transactions. It says, if the liability arises from business transaction the interest rate shall be as per terms of contract or as per interest rate of nationalize banks. In

the present case, the transaction between the parties is clearly business. But, there does not appear any contract in relation to an interest. Thus, as per this provision an interest rate of nationalize banks will have to be taken into consideration. As per current position, normal rate of interest of nationalize banks is 9 to 11 per cent. Thus, in my view an interest @ of Rs. 9 %per annum would be proper. Hence, I answer point No. 2, accordingly.

**AS TO POINT NO. 03:-**

13. In view of the positive findings of point Nos. 01 and 02, the plaintiff is entitled to the relief claimed. Hence, the suit deserves to be decreed with costs, as grant of costs to the successful party under section 35 of the CPC is a rule and rejection thereof is an exception. Hence, following order:-

**ORDER**

1. The suit is decreed with costs.
2. The defendant do pay Rs. 2,80,302/- to the plaintiff with interest @ of Rs.9% per annum from the date of the suit till realization of the said amount.
3. A decree be drawn up accordingly.

Bhokardan  
Date : 10/06/2019.

Sd/-  
(S. S. Bajaj)  
Civil Judge Junior Division,  
Bhokardan.