



Suit presented on 09/09/2014
Suit registered on 09/09/2014
Suit decided on 30/07/2018

Duration 21/10/0003
D/ M/ YEAR

**IN THE COURT OF 6TH ADDITIONAL SENIOR CIVIL JUDGE OF
VADODARA
Special Summary Suit No. : 88/2014
Exh : 133**

Plaintiff/s : Muljibhai Kantibhai Patel
Proprietor of Patel Oxygen Company
Address : Sant kabir Road,
Near Kamubala hall
Vadodara

V/s.

Defendant/s (1) K.P. Buildcon Pvt. Ltd.
Office : 1/98/A/B,
Ground floor, Golandaj Building
Golandaj Street, Nanpura Surat
(2) The Petron Engineearing Constr

SUIT : For Recovery of Rs. 8,79,209.45/-

Mr. Nilesh Joshi : Learned Advocate for the plaintiff

Mr. R.J.Rathod : Learned Advocate for the defendant

JUDGMENT

(1) By this judgment and order I shall adjudicate the summary suit

instituted by plaintiff. The plaintiff has instituted this suit against defendant under Order 37 of C.P.Code for recovery of Rs.8,79,209.45/- The sort facts of the case are that the plaintiff is proprietor of Patel Oxygen and doing business of welding materials, safety materials etc. since last many years. The defendant Bulcon company is having work project Nr. Dabhasha village Near Padara Dist Vadodara and second project is at Sachin Dist Surat. It is stated that in the year 2011-2012 defendant has given purchase order to the supply of welding and cutting material for his project works and as per purchase order plaintiff has supply according to order and after delivery of material POD signed by defendant. As agreed, defendant is bound to make payment within one month from date of receipt of material. It is further stated that plaintiff has deliver the material immediately and there after defendant also deposited payment in account. On dated 25/6/2015 defendants has send one letter about confirmation of legal due as per record up to 27/2/2012 Rs. 5,20,852.65/- which confirmed by plaintiff after stating that he has deposited cheque of Rs. 24,260/- which is not deposited in plaintiff's account. In fact it was not deposited in plaintiff's account and due amount is 5,20,852.65/-. Plaintiff have demanded these amount by way of telephone but they neglected. Plaintiff have issued legal notice to defendants on dated 27/9/2013 for due amount including interest amount which was refused to him. It is further stated that after receiving material defendant's authorized person has check and signed. Till today plaintiff has not received any complaint or return the materials. Defendants ought to have make payment within 30 days after material received but he failed to do so. Under such circumstances, plaintiff have demanded Rs 8,79,209.45/- along with 24% interest. In spite of business conditions defendants have not make any payment thus suit has been instituted accordingly.

(2) The defendant was served with the summons for appearance u/o. XXXVII by way of regular process, and as per declaration of defendant himself he has received it. after the appearance defendant has prayed for

leave to defend which was allowed with conditions that the defendant shall deposit the 50% amount of total demanded amount which has not been complied by the defendant.

As the conditional leave to defend not complied, plaintiff is now plaintiff is entitled to get relief as prayed.

(3) Heard the learned advocate for the plaintiff, perused the copies of documents on record, read carefully plaint and material on record. For deciding same following issues would be framed.

1. Whether the plaintiff is entitled to recover the sum of Rs.8,79,209.45/-as prayed for?
2. What relief.

My answers would be following

1. In affirmative
2. As per final order

(4) Plaintiff have produced the documents vide Exh. 30 to 131 which are bills, delivery challans, etc, While defendant have not produced any documents for his defence in any manner.

Reasons

(5) I have heard the ld. advocate for the plaintiff and perused the record carefully. This is a suit U/o 37 of CPC and defendant has entered as an appearance for leave to defend himself after service of summons U/o 37 of CPC., he has fail to contended the suit claim as it was conditional. On perusal of file as well as documents attached along with the suit, and whatever on record it is found that plaintiff goes unrebutted and incontrovertibly as defendant is proceeded with without file his defence rather he fail to defend, the original delivery challans are produced, therefore the suit of the plaintiff is duly corroborated and supported by the documents produced by plaintiff. I have no reason to disbelieve the

testimony of the plaintiff. The plaintiff has been able to prove his case. In the given fact and circumstances of the case, The plaintiff's suit is also seems within limitation accordingly. U/o. 37 this Court having jurisdiction to try and entertain the such kinds of suit because the nature of suit is based on Sale of goods act and business transaction and would be fall under O.37, R. 1(2)(b)(ii) the Honorable Delhi High Court has held that invoices/bills are written contract within the contemplation of this order (reported in AIR 2001 Delhi 357 KIG Systel Ltd. v. Fujitsy ICIM Ltd.) It is also noticeable that the reply of notice is not given by defendants. The interest amount of 24% is reflected in all the invoices.

Thus plaintiff is entitled to a decree in the sum of Rs. 8,79,209.45/- against the defendants. Plaintiff is further entitled to interest @ 24% per annum from the date of filing of the suit till the date of the decree. The costs are awarded in favour of the plaintiff. Hence following order accordingly.

: Order :

- (1) The suit of plaintiff is allowed and decreed with cost.
- (2) It is here by ordered that defendant shall pay the decreetal amount Rs. 8,79,209.45/-with interest at the rate of 24% p.a. from date of filing of suit to till realization.
- (3) If defendant failed to pay said amount, the plaintiff is entitled to get decreetal amount from all movable and immovable property of the defendant.
- (4) Decree sheet shall be drawn up accordingly.

Pronounced in open court to dat 30th July, 2018:

Dated: 30.07.2018

Sanjay Babulal Shah
6th Addl. Sr. Civil Judge

Vadodara