



Received on 27/02/2018
Registered on 27/02/2018
Decided on 06/05/2023
Duration Ys. Ms. Ds.

In The Court Of 8th Additional Senior Civil Judge, Surat.

SUMMARY SUIT NO. 8 OF 2018

Exh.

- Plaintiffs : 1. M/s Narayan Creation is a Partnership Firm**
Address : 77-78, Unity Estate, Nr. Batliboi, Udhna Road, Surat.
- 2. M/s Laxmi Creation is a Partnership Firm**
Address : 77-78, Unity Estate, Nr. Batliboi, Udhna Road, Surat.
- 3. Rajubhai Vashrambhai Goti**
Aged : 62 years, Religious : Hindu, Occupation : Business, Residence : 58, Narayan Muni Nagar, Ved Road, Surat -4.
- 4. Arvindbhai Rajubhai Goti**
Aged : 37 years, Religious : Hindu, Occupation : Business, Residence : 58, Narayan Muni Nagar, Ved Road, Surat -4
- 5. Dipeshbhai Rajubhai Goti**
Aged : 35 years, Religious : Hindu, Occupation : Business, Residence : 58, Narayan Muni Nagar, Ved Road, Surat -4.
- 6. Anjuben Rajubhai Goti**
Aged : 58 years, Religious : Hindu, Occupation : Business, Residence : 58, Narayan Muni Nagar, Ved Road, Surat -4

Versus

Defendant : **Rajkumar Tilokchand Ramsingani is a Proprietor and Authorized Person of M/s R.K. Creation.**
 Aged : 24 years, Religious : Hindu, Occupation :
 Business, Residence : at 24 Puskar Bungalow, Opp.
 Sanjay Nahata, Nana Cholada, Ahmedabad - 380002

SUBJECT : **SUIT FOR RECOVERY OF RS. 13,95,780/- ALONG WITH FURTHER INTEREST /-**

Appearance

Ld. Advocate for the Plaintiffs :- Mr. V. B. Parshiya,
 Ld. Advocate for the Defendant :- Mr. A. M. Thakore,

J U D G M E N T

1. The plaintiffs have filed the present suit against the defendant under Order 37 of the Civil Procedure Code, the brief facts of the suit is that the plaintiff No.3 to 6 are partners of plaintiff No.1 partnership firm while plaintiff No.3 to 5 are partners of plaintiff No.2 partnership firm and doing the business of job work in dress materials. The defendant firm is also doing the same business and therefore business relation was established. The defendant had done job work from the plaintiff's firm so many times and also paid the payment in regular time but last for the year 2016-2017 the defendant was irregular in payment of dues and it was not willing and readiness to make the payment of dues. The details of the said job work as under :

Sr.	Bill No.	Date	Particulars	Amount
1.	138	13.07.2016	Job work in 3315 mtr clothes of Laxmi Creation	3, 21,555/-
2.	40	30.07.2016	Job work in 1359 mtr clothes of Narayan Creation	3,06,423/-
3.	43	12.08.2016	Job work in 5460 mtr clothes of Narayan Creation	4,64,100/-

4.	44	15.08.2016	Job work in 5850 mtr clothes of Narayan Creation	4,97,250/-
TOTAL				15,89,328/-

(2) The plaintiffs firm had done job work of the defendant clothes and also issued bills and the said job work by the plaintiffs and also as per say of the defendant the said goods sent to M/s Chaturbhuj Synthetic Pvt Ltd, at Palshana for dying work. The plaintiffs had issued bills for job work against the defendant and payment of the said bills demanded by the plaintiffs from the defendant, The defendant had issued three cheques for job work of 3159 meter clothes for Narayan Creation. The cheque numbers are 001487, 001488 & 001489 and every cheque was of Rs. 1,02,141/- and total amount of three cheques are Rs. 3,06,423/-. All three cheques were returned by bank with endorsement "Funds Insufficient". The plaintiff once again deposited the said three cheques in its bank account and all three cheques were once against return with endorsement "DRAWERS SIGNATURE DIFFERS". The defendant had issued four cheques for job work of 5460 meter clothes for Narayan Creation. The cheque numbers are 001283, 001282, 001284, 001285 and every cheque was of Rs. 1,13,704/- and total amount of four cheques are Rs. 4,64,100/-. Out of these four cheques, two cheques numbered as 001284 and 001285 were returned by the bank with endorsement "Funds Insufficient". The defendant had issued three cheques each for amount of Rs. 1,21,826/- vide bearing No. 001286, 001287, 001288 and one cheque No. 001289 for amount of Rs. 1,21,827/- and total amount of Rs. 4,97,250/- for job work of 5850 meter clothes for Narayan Creation. Out of these four cheques, cheque No. 001288 and cheque No. 001289 were returned by bank with the endorsement Funds Insufficient

and Stale. The defendant had not paid any single amount for the jobwork of Laxmi Cration of 3315 meter clothes and therefore following amount are dues from the defendant.

Sr.	Cheque / Bill No.	Date	Particular	Amount (Rs)
1.	Bill No.138	13.07.2016	Laxmi Creation	3,21,555/-
2.	Cheque No.001487	10.02.2017	Narayan Creation	1,02,141/-
3.	Cheque No.001488	11.02.2017	Narayan Creation	1,02,141/-
4.	Cheque No. 001489	12.02.2017	Narayan Creation	1,02,141/-
5.	Cheque No.001284	20.10.2016	Narayan Creation	1,13,704/-
6.	Cheque No.001285	21.10.2016	Narayan Creation	1,13,704/-
7.	Cheque No.001288	20.10.2016	Narayan Creation	1,21,826/-
8.	Cheque No. 001289	21.10.2016	Narayan Creation	1,21,827/-
TOTAL				10,99,039/-

(3) The said facts intimated by the plaintiffs to the defendant but it was not considered and even not readiness and willingness to make the payment for issued bills and hence no option to issue a legal notice by the plaintiff for recover its dues and it was issued by the plaintiffs through its Advocate and the said notice were sent by RPAD and it was served upon the defendant on dated 15.12.2017 but till today the defendant did not make the payment for doing jobwork and hence no option to file the present suit against the defendant for recovery of amount along with interest and cost of the suit.

2. After filing the suit, the summons of the suit has been issued to the defendant. The defendant appeared before the Court and filed his purshis for appearance through Advocate vide Exh.8 and Vakalatnama vide Exh. 9.

3. After that Plaintiff had filed affidavit of summons for judgment at Exh.10, and also filed an application vide Exh.11 to issue process for summons for judgment, and my Id. Predecessor passed an order to issue notice of summons for judgment.

4. After that defendant had filed an application for leave to defend at Exh.15. My Id. Predecessor passed an order below Exh.15 and partly allowed the application with given below conditions,

- A.** Defendant deposit 50% of amount i.e. 13,95,780/- in the court and this amount is to be deposited by defendant within one month of this order.
- B.** If defendant complying it within time then present suit is to be converted in Special Civil Suit and tried as per the CPC for trial of Civil Suit and not as per Summary Suit.
- C.** If defendant failed to comply this order within time then present order amount to be cancelled and plaintiff entitled to proceed present suit according to provision of summary suit as per which present suit filed.
- D.** After complying by the defendant as per this order present suit enter in Special Civil Suit register by the Registrar.

5. The defendant failed to comply with the order passed by this Court at Exh.15. Thenafter, the plaintiff had filed an application vide Exh.40 under Order XXXVII Rule 3(6)(b) of CPC to pass the final judgment in the present matter as the defendant failed to comply with

the order passed below Exh.15. The defendant has filed an appeal against that order but till today the defendant did not succeed to make stay order against the order below Exh.15.

6. As the defendant failed to comply with the order passed below Exh.15 by my Id. Predecessor, the plaintiff shall be entitled to judgment forthwith and the allegations made in the plaintiff shall be deemed to be admitted by him under Order 37 of CPC.

8. Looking to these aspects the plaintiff has proved that defendant has done job work for the amount of Rs. 15,89,328/- from the plaintiff and the defendant also made the part payment for the said job work by issuance of cheque and now remaining due as of Rs. 10,99,039/- so the defendant is liable to pay this amount but he has not paid the said amount and hence the plaintiff is entitled to recover the same amount with interest. Now the claiming of interest at the rate of 18 % per annum but here the plaintiff has not filed agreement regarding rate of interest. Therefore, the plaintiff is entitled to recover the amount from the defendant of Rs. 10,99,039/- with interest.

9. So far interest is concerned, there is no agreement executed between parties in respect of interest regarding unpaid bill amount under the above circumstances, as held by Hon'ble Apex Court, current bank rate should be awarded. Hence, I award interest at the rate of 9% p.a. on principal amount.

10. Under the above facts and circumstances of the case, this suit of the plaintiff deserves to be allowed with cost and hence, I pass the following final order.

ORDER

- (A) The suit of the plaintiff is hereby allowed and decreed.
- (B) The defendant do pay sum of Rs. 10,99,039/- (Rs. Ten lac Ninety Nine Thousand Thirty Nine only) to the plaintiff firms with running interest at the rate of 9% per annum principal amount from the date of filing the suit till realization of the decretal amount.
- (C) The defendant do pay costs of this suit to the plaintiffs and bear his own.
- (D) Decree to be drawn accordingly.

Signed and pronounced today on day of 06.05.2023, in the open court.

06/05/2023.

[Ms. A. J. Rana]
8th Additional Senior Civil Judge,
Surat.
UID : GJ00895